

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P3.

C.P. (IB)/252(MB)2026

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **22.09.2026**

NAME OF THE PARTIES:

Kotak Mahindra Bank Limited

Vs

Avarsekar And Sons 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)

//S.DUBEY//

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/252/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]*

Kotak Mahindra Bank Limited

[CIN No. L65110MH1985PLC038137]

27 BKC, C27, G Block, Bandra Kurla-

-Complex, Bandra East, Mumbai-400051

Maharashtra, India.

...Financial Creditor/Applicant

V/s

Avarsekar And Sons Private Limited

[CIN No. U45200MH1990PTC059267]

1252, Pushpanjali Apartment,

Old Prabhadevi Road,

Prabhadevi, Mumbai-400025.

...Corporate Debtor

Pronounced: 22.09.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Mr. Rohan Agarwal, Adv. Mr. Chinmayee, Adv. Mr.

Nishant Rana i/b Zastriya

For Respondent: Adv. Mr. Sanjiv Punalekar

ORDER

[PER: CORAM]

1. BACKGROUND

1.1. C.P. (IB) No.252/MB/2026 (Application) was filed on 25.02.2026 by **KOTAK MAHINDRA BANK LIMITED** the Financial Creditor (FC), having CIN No.: L65110MH1985PLC038137 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 **AVARSEKAR AND SONS PRIVATE LIMITED**, the Corporate Debtor, having CIN No. U45200MH1990PTC059267.

1.2. This Application has been affirmed by one Mrs Ankita Mannari, authorised signatory of the Applicant vide Board Resolution dated 29.08.2025

1.3. In Part III of the application the Financial Creditor has proposed the name of Mr. Pramod Dattaram Rasam, an Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P00722/2017-2018/11259, to act as the Interim Resolution Professional (IRP) (having valid Authorisation for Assignment up to 31.12.2026) (as per IBBI site), in case the Application is admitted.

- 1.4. As per Part IV of the Application, the amount claimed to be in default is Rs. 68,48,63,360.22 /- (Rupees Sixty-Eight Crores Forty-Eight Lacs Sixty-Three Thousand Three Hundred and Sixty and Twenty-Two Paise Only).
- 1.5. The date of default is stated as 23.09.2023 and the date of NPA is stated as 30.06.2015, in respect of the Corporate Debtor, which is the Corporate Guarantor in respect of debts of the Principal Borrower, *M/s. Unity Infra Projects Limited*.

2. CONTENTIONS OF APPLICANT (FC)

- 2.1. It is submitted that the financial facilities were originally sanctioned by **ING Vysya Bank Limited**, which subsequently amalgamated with the Financial Creditor, Kotak Mahindra Bank Limited, with effect from **01.04.2015**. At the request of the Borrower, working-capital facilities aggregating to **Rs. 5,000 lakhs** were initially sanctioned vide Sanction Letter dated **14.08.2008**. The facilities comprised a Bank Guarantee facility of Rs. 5,000 lakhs, with sub-limits including Cash Credit/WCDL of Rs. 1,000 lakhs and Import LC/Inland LC of Rs.500 lakhs. A copy of Section letter dated 14.08.2008 is annexed as Annexure A-1.
- 2.2. It is stated that the aforesaid facilities were renewed/ reviewed/modified from time to time under sanction letters dated 09.06.2009, 25.02.2010 02.05.2011, 04.08.2012, 12.07.2013 and 18.06.2014.
- 2.3. The Financial Creditor states that, around the year 2014, the Borrower started facing financial difficulties and was unable to meet its financial

commitments towards its lenders. Consequently, the Borrower's case was referred to the **Corporate Debt Restructuring Cell (CDR)**. The CDR Empowered Group, in its meeting held on **16.12.2014**, approved a restructuring package, the terms whereof were communicated through the Letter of Approval dated **26.12.2014**. Pursuant thereto, the restructuring arrangements and the relevant security documents were executed.

2.4. Pursuant to the aforesaid restructuring, the Financial Creditor issued a fresh Sanction Letter bearing Ref. No. **EC/WEST/SB/322/2014-15 dated 05.02.2015**, whereby the restructured facilities aggregating to **Rs.3,178 lakhs** were sanctioned, comprising Bank Guarantee of Rs.584 lakhs, ILC/FLC of Rs.150 lakhs, FBWC/Cash Credit of Rs.1,212 lakhs, WCTL-I of Rs.802 lakhs, FITL-I of Rs.216 lakhs and FITL-II of Rs.214 lakhs. A copy of the Sanction Letter dated 05.02.2015 is annexed as Annexure A-2.

2.5. It is stated that under the CDR Scheme, fresh security was created, inter alia, by the Corporate Debtor/Guarantor, for securing the restructured facilities, in favour of the Security Trustee for the benefit of lenders, including the Applicant/Financial creditor, in line with the Amended & Restated Master Restructuring Agreement dated 18.02.2015 and Amended & Restated Security Trustee Agreement dated 18.02.2015, which are enumerated below and are annexed as Annexure A-3 to A-5.

- a. Deed of Guarantee executed by the Corporate Debtor/Guarantor dated 18.02.2015;

- b. Pledge Agreement dated 18.02.2015 thereby pledging the shares held by Corporate Debtor/Guarantor in the Borrower company;
- c. Pledge Agreement dated 27.05.2016 executed, inter alia, by the Corporate Debtor/Guarantor pledging its shares held in subsidiaries/associates of the Borrower.

2.6. It is stated that inspite of the restructuring of its debts, the Borrower could not meet the obligations and defaulted in its payments under CDR Scheme due to which the account of Borrower was declared as Non-Performing Asset (NPA) on 30.06.2015. Further, the case of Borrower exited from the CDR on 31.08.2017.

2.7. In view of the continuing defaults committed by the Borrower, the Financial Creditor invoked the guarantees, including the Corporate Guarantee furnished by the Corporate Debtor, by issuing an Invocation Notice dated 07.10.2019, calling upon the guarantors to discharge the outstanding liability. The Invocation Notice is annexed as Annexure A-6.

2.8. Upon failure of the Corporate Debtor/Corporate Guarantor to discharge its liability despite invocation of the guarantee, the Financial Creditor instituted Original Application No. 934/2019 before the Hon'ble Debts Recovery Tribunal, New Delhi ("DRT"), inter alia, against the Corporate Debtor. Since the principal Borrower, i.e. M/S Unity Infra Projects Limited was then undergoing CIRP and was protected by the moratorium under Section 14 of the Code, its Resolution Professional was impleaded as a pro forma defendant in the said proceedings. The Financial Creditor states that the aforesaid Original Application came to be allowed by the

Hon'ble DRT, New Delhi, vide Judgment/Order dated 17.08.2023, whereby the defendants therein, including the present Corporate Debtor/Corporate Guarantor, were directed jointly and severally to pay to the Financial Creditor a sum of Rs.39,45,08,505.78, together with future interest at the rate of 11% simple interest per annum from the date of filing of the Original Application until realization. The said DRT order has been annexed to the Petition as Annexure A-7.

2.9. Pursuant to the aforesaid adjudication, the Hon'ble DRT issued a Recovery Certificate dated 23.08.2023, inter-alia certifying the liability against the Corporate Debtor/Corporate Guarantor, jointly and severally, for a sum of Rs.55,94,13,061.20 as on 17.08.2023, together with further interest thereon at the rate of 11% simple interest per annum. The Recovery Certificate dated 23.08.2023 is annexed as Annexure A-8.

2.10. The Financial Creditor further submits that pursuant to the Recovery Certificate, Recovery Proceeding No. 33/2023 were initiated wherein Ld. DRT, Delhi has issued a Demand Notice dated 01.03.2024 and Default Notice dated 15.04.2024 calling upon the Corporate Debtor/Guarantor to make payments as per the Recovery Certificate, but the Corporate Guarantor has failed to make any payments till date. The said recovery proceedings are pending as on date. Copies of the said notices are annexed as Annexures A-9 and A-10.

2.11. It is further the case of the Financial Creditor that the principal Borrower, Unity Infra projects Limited, was ordered to be liquidated by this Tribunal vide order dated 08.04.2021 passed in C.P. (IB)/1058(MB)/2017. In the

liquidation proceedings of the Borrower, the claim of the Financial Creditor was admitted for an amount of Rs.48,02,97,115/- as on 08.04.2021, i.e., the liquidation commencement date. The Financial Creditor relies upon the email dated 30.06.2021 and the claim details uploaded by the Liquidator as evidence of admission of its claim as a secured financial creditor. Copies of Email dated 30.06.2021 and Claim details as uploaded by the Liquidator of borrower company on the website of IBBI acknowledging and admitting the claim of Applicant as a Secured Financial Creditor are annexed as Annexure A-11 and A12.

2.12. As regards the quantum of default, the Financial Creditor has stated in Part IV of Form 1 that an amount of Rs.68,48,63,360.22 (Rupees Sixty-Eight Crores Forty-Eight Lakhs Sixty-Three Thousand Three Hundred Sixty and Twenty-Two Paise) was due and in default as on 31.08.2025. The Financial Creditor has also disclosed the date of NPA as 30.06.2015 and the date of issuance of the DRT Recovery Certificate as 23.08.2023, and has annexed the computation based upon the Recovery Certificate for arriving at the amount claimed in default.

2.13. In support of its Application, the Applicant has attached the following documents along with the Application:

- a. Copy of Sanction Letter dated 14.08.2008 and 05.02.2015
- b. Copy of Deed of Guarantee executed by the CD on dated 18.02.2015.
- c. Copy of Pledge agreement dated 18.02.2015 and 27.05.2016 executed, inter alia, by the Corporate Guarantor pledging its shares held in subsidiaries/associates of the Borrower.

- d. Copy of Invocation Notice dated 07.10.2019.
- e. Copy of order passed by Ld. DRT, Delhi dated 17.08.2023.
- f. Copy of Recovery Certificate dated 23.08.2023.
- g. Copy of Demand Notice dated 01.03.2024.
- h. Copy of Default Notice dated 15.04.2024.
- i. Copy of email dated 30.06.2021.
- j. Copy of claim uploaded by the Financial Creditor.
- k. Copy of Certificate of Registration of Charge.
- l. Copy of Record of Default (Form -D).
- m. Copy of Master Data.
- n. Copy of the written communication by proposed Interim Resolution Professional under Form 2.
- o. Copy of Form for serving copy of application for initiation of CIRP to the IBBI.
- p. Copy of IBBI Certificate.
- q. Copy of Board Resolutions dated 29.08.2025.

3. Additional Affidavit 18.03.2026 by the Applicant

3.1. The Financial Creditor has also filed an Additional Affidavit along with the Amended Form 1, pursuant to the liberty granted by this Tribunal vide order dated 17.03.2026. The said affidavit has been affirmed by Ms. Ankita Mannari, Senior Vice President and Authorised Representative of the Financial Creditor, who has stated that save and except the amendments incorporated in the Amended Form 1, all other contents of the original Form 1 remain unchanged. The Financial Creditor has

accordingly prayed that the Amended Form 1 be taken on record in compliance with the aforesaid order of this Tribunal.

3.2. In the Amended Form 1, the Financial Creditor has, inter alia, specifically stated in Part IV that the amount claimed to be in default is Rs.68,48,63,360.22 as on 31.08.2025. It has further disclosed the date of NPA as 30.06.2015, the date of issuance of the DRT Recovery Certificate as 23.08.2023, and has now specifically mentioned the **date of default as 23.09.2023**.

3.3. The computation of the amount claimed in default is stated to be based upon the Recovery Certificate issued by the DRT, New Delhi.

4. Additional Affidavit dated 27.07.2026 by the Applicant

4.1. The Financial Creditor stated that the pursuant to hearing dated 21.07.2026, the Corporate Debtor raised an objection with respect to the recovery made by the Financial Creditor in the liquidation proceedings of the Principal Borrower, *M/s. Unity Infraprojects Limited*. By way of the said Affidavit, the Financial Creditor has clarified and placed on record that it has received a sum of Rs.20,26,580.11/- (Rupees Twenty Lakhs Twenty-Six Thousand Five Hundred Eighty and Eleven Paise only) till date in the liquidation proceedings of the Principal Borrower. In these circumstances, the Financial Creditor has reiterated its prayer for admission of the present Company Petition and initiation of CIRP against the Corporate Debtor.

5. REPLY BY CORPORATE DEBTOR

5.1. A Reply Affidavit dated 25.04.2026 was filed on behalf of the CD through Mr. Sanjay Subhedar, who is a Director of the CD.

5.2. The principal objection raised by the Corporate Debtor is that the present Petition is barred by limitation. According to the Corporate Debtor, the alleged Deed of Guarantee was executed on 18.02.2015 and, as admitted by the Financial Creditor in its recall notice, the said guarantee was invoked on 07.10.2019. It is, therefore, contended that the present Petition instituted in the year 2026, after expiry of three years from invocation of the guarantee, is barred by limitation and liable to be dismissed.

5.3. The Corporate Debtor further contends that the alleged Deed of Guarantee was not executed in favour of the Financial Creditor but in favour of the Security Trustee. According to the Corporate Debtor, the Security Trustee acts in its own right and cannot merely be regarded as an agent. Therefore, once a Security Trustee arrangement is in place, an individual beneficiary bank cannot exercise the rights or powers vested in the Security Trustee without showing that the trustee has been discharged or that the beneficiary has otherwise acquired the requisite authority. On this basis, it is contended that the Financial Creditor cannot independently maintain proceedings founded upon documents executed in favour of the Security Trustee.

5.4. It is stated that the petition is even otherwise liable to be dismissed since the entire documents showing arrangement amongst consortium members by way of inter-se agreement and the agreement with the Security Trustee have not been produced and have been suppressed by the Financial Creditor. A perusal of such documents is necessary and obligatory so as to ascertain whether the Financial Creditor has any right to file a petition in its own right without involving the Security Trustee.

5.5. The Corporate Debtor further disputes the Financial Creditor's entitlement on the basis of the Amended and Restated Master Restructuring Agreement dated 18.02.2015. It is stated that the Financial Creditor claims through the erstwhile ING Vysya Bank Limited, which merged with Kotak Mahindra Bank Limited with effect from 01.04.2015. According to the Corporate Debtor, documents produced by State Bank of India in O.A. No. 874 of 2018 before the DRT, Delhi, included a copy of the Amended and Restated MRA dated 18.02.2015 which did not bear the signature of ING Vysya Bank Limited. In support thereof, the Corporate Debtor relies upon the draft Minutes of the Monitoring Committee Meeting of the CDR lenders dated 30.04.2015, annexed as Annexure-A. The said minutes record that the MRA had been executed by all lenders except ING Vysya Bank; that ING Vysya Bank had executed the earlier MRA on 30.12.2014 but had not executed the Restated and Amended MRA dated 18.02.2015; and that certain internal issues were required to be resolved.

5.6. The Corporate Debtor also relies upon the email dated 02.05.2015 issued by State Bank of India, annexed as Annexure-B, whereby the draft

minutes of the Monitoring Committee Meeting dated 30.04.2015 were circulated for perusal and suggested modifications.

5.7. Further reliance is placed upon an email dated 11.05.2015 emanating from Kotak Mahindra Bank Limited, annexed as Annexure-C. In the said communication, Kotak stated that, with reference to the amended MRA, several clarifications had been sought for approval from its internal legal team and remained unresolved, and requested clarification so as to enable execution of the amended MRA.

5.8. On the strength of the aforesaid material, the Corporate Debtor questions how the copy of the Amended and Restated MRA dated 18.02.2015, subsequently relied upon by the Financial Creditor, came to bear the signature and rubber stamp of ING Vysya Bank Limited when, according to the aforesaid contemporaneous records, ING Vysya Bank had not executed the amended MRA at least until 11.05.2015 and had already merged with Kotak Mahindra Bank Limited with effect from 01.04.2015. The Corporate Debtor accordingly alleges that there appears to have been tampering/meddling with the document and submits that the matter requires scrutiny.

5.9. Admittedly, the Financial Creditor herein did not grant any facilities under the CDR. There was correspondence between principal borrower company and the lenders as also with the CDR Cell which shows that some of the lenders including the Financial Creditor had not extended financial assistance that ought to have been released. It is submitted that due to such conduct of the lenders including the Financial Creditor herein,

the Corporate Debtor herein stands discharged if at all the existence of guarantee is presumed.

5.10. It is stated that the Financial Creditor that the guarantees were given for implementation of CDR which involved release of credit facilities envisaged under CDR. Such obligation was jointly taken over by the lending banks/institutions. It is a matter of common knowledge that when agreed finance is not released, a unit suffers and its debt may turn out to be NPA. Unless all the relevant facts are brought before this Hon'ble Tribunal to conclusively prove that facilities as per CDR were fully released, there is no ground to invoke the alleged guarantees at all. There was correspondence between principal borrower company and the lenders as also with the CDR Cell which shows that some of the lenders including the Financial Creditor had not extended financial assistance that ought to have been released. The Corporate Debtor herein craves leave to produce and rely upon the entire correspondence demonstrating as to how some of the lenders suffocated the principal borrower company and why the entire alleged debt should be set off against the losses inflicted by such lenders on the principal borrower company.

5.11. Secondly the alleged guarantee was admittedly obtained from group companies including the Corporate Debtor herein only and only due to securities provided by the concerned alleged corporate guarantors and therefore the liability of such alleged corporate debtors cannot be in excess of the value of the securities obtained from each one of them. Hence the alleged corporate guarantees are not enforceable beyond the

realizable value of the alleged securities created in favour of the Security Trustee.

5.12. Lastly unless and until it is shown that the CDR was actually implemented in favour of principal borrower company fully, the guarantees are not enforceable even otherwise. The Corporate Debtor craves leave to file a further affidavit if necessary, to bring such documents and correspondence on records. Most importantly, the Financial Creditor's claim is already admitted by the Liquidator of the Principal Borrower Company. A petition for insolvency resolution of an alleged guarantor would not be maintainable unless there is fullest disclosure about the amount/s earlier realized and to be realised from the principal borrower. On this count also the petition herein is liable to be dismissed.

5.13. The Corporate Debtor accordingly submits that admission of the Petition without obtaining fullest disclosure on various material aspects which are suppressed by the Financial Creditor, there would be grave and irreparable harm and injury to the Corporate Debtor.

6. REJOINDER BY THE FINANCIAL CREDITOR

6.1. It is contended that the Reply is evasive and does not disclose any substantial or legally sustainable ground for rejection of the claim of the Financial Creditor.

6.2. As regards the objection raised by the CD with respect to the limitation period for filing the present application, the Financial Creditor submits that

the guarantee was invoked on 07.10.2019 pursuant to which an Original Application was filed in the Hon'ble Debts Recovery Tribunal, Delhi for recovery of dues. It is further stated that thereafter the period of Covid-19 from March, 2020 till 2021 has been excluded by the Hon'ble Supreme Court. It is further stated that DRT, Delhi has passed a judgement and decree dated 17.08.2023 and pursuant to the same a recovery certificate dated 23.08.2023 was issued. The instant application has been filed on 25.02.2026 and hence is squarely within limitation. Hence, the said ground is entirely devoid of merit and same is made without the proper application of mind.

6.3. With respect to the Corporate Debtor's objection that the security documents and Corporate Guarantee were executed in favour of the Security Trustee and, therefore, the Financial Creditor lacks locus to independently institute the present proceedings, the Financial Creditor submits that the said issue has been dealt with in detail in the judgement and decree dated 17.08.2023 passed by the Debt Recovery Tribunal at Delhi (Paragraph 17, Pg.201, Vol 2 of the Petition) thereby holding that once there is a default by the CD, the Financial Creditor being a party to the trustee agreement, under the terms of the said agreement is entitled to initiate proceedings for recovery and accordingly, the financial creditor had initiated proceedings by filing an Original Application which has been allowed by the Debt Recovery Tribunal at Delhi. The said a judgement and decree dated 17.08.2023 has not been challenged by the CD and the same has attained finality. Without prejudice to the aforesaid, it is further

submitted that once this issue has been already adjudicated by the Debt Recovery Tribunal at Delhi, this objection holds no water.

6.4. As regards the Corporate Debtor's objection concerning the **Amended and Restated Master Restructuring Agreement dated 18.02.2015**, particularly the allegation that the same had not been executed by the erstwhile ING Vysya Bank Limited and that the said documents were not signed till the merger with Kotak Mahindra Bank and further the ground that the restructured facilities were not released by the financial creditor. It submits that it cannot be called upon to justify an alleged document filed in a third-party litigation against the CD and has no relevance to the present proceedings. It is stated that this issue was also raised by the CD before the Debt Recovery Tribunal at Delhi and has been dealt with in detail in the judgement and decree dated 17.08.2023 (see Para 14, page 200-201, Vol 2) and same has been rejected. It is therefore stated that the CD is reiterating the issues which have already been adjudicated and decided by the Debt Recovery Tribunal at Delhi. Without prejudice to the aforesaid, the said issue was also raised by the CD before the Hon'ble High Court of Bombay in Commercial Suit bearing No 399 of 2019 filed by the financial creditor against the present CD and various other connected parties for setting aside various fraudulent transactions entered into by them and the financial creditor has initiated perjury proceedings being NMCD No. 1353 of 2019, inter alia, against the CD for making false statements on oath and the same is pending as on date.

- 6.5. As regards the contention of the Corporate Debtor that the Financial Creditor failed to release the facilities contemplated under the **CDR package**, the Financial Creditor specifically denies the same and puts the Corporate Debtor to strict proof thereof. It further contends that this issue was also considered in the DRT Judgment dated 17.08.2023, particularly at **paragraph 16, page 201 of Volume II**, and submits that, in any event, the said contention has no bearing upon admission of the present Petition.
- 6.6. With regard to the Corporate Debtor's challenge to the **extent and enforceability of its liability under the Corporate Guarantee**, the Financial Creditor submits that the said issue also stands adjudicated by the DRT, Delhi in its Judgment dated 17.08.2023. Specific reliance is placed upon **paragraph 18 at page 202 of Volume II**, wherein, according to the Financial Creditor, the liability of the Corporate Debtor has already been adjudicated. It is further contended that the said adjudication has attained finality.
- 6.7. In its paragraph-wise response, the Financial Creditor reiterates its aforesaid submissions in answer to **paragraphs 1 to 11 of the Reply** and denies all averments contrary thereto. In response to **paragraphs 12 to 16 of the Reply**, the Financial Creditor states that the insolvency and liquidation of the Principal Borrower have already been disclosed in the Company Petition and denies the contention that proceedings cannot be maintained against the guarantor on that account.
- 6.8. In view of the aforesaid, the Financial Creditor contends that the Corporate Debtor has failed to establish any sustainable ground

warranting rejection of the Section 7 Application. It accordingly reiterates the reliefs sought in the Company Petition and prays that the present Company Petition be allowed.

7. WRITTEN SUBMISSIONS BY FINANCIAL CREDITOR

7.1. The Financial Creditor has filed brief synopsis/ written statement of its arguments, which has been considered while passing this order.

7.2. The Financial Creditor has relied on the following judgment.

- i. Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddy & Anr.

8. WRITTEN SUBMISSIONS BY CORPORATE DEBTOR

8.1. The Corporate Debtor has filed brief synopsis/ written statement of its arguments, which has been considered while passing this order.

8.2. At the time of hearing held on 25.08.2026, the Corporate Debtor has relied on the following judgments:

- i. Judgement of Hon'ble Bombay High Court dated 09.06.2026 in the matter of Mr. Ajeet Madhukar Mulay vs. Adhyudaya Co-Operative Bank Limited & Ors., in Commercial Arbitration Petition no. 843 of 2024, 849 of 2025 and 1053 of 2025.

9. ANALYSIS AND FINDINGS

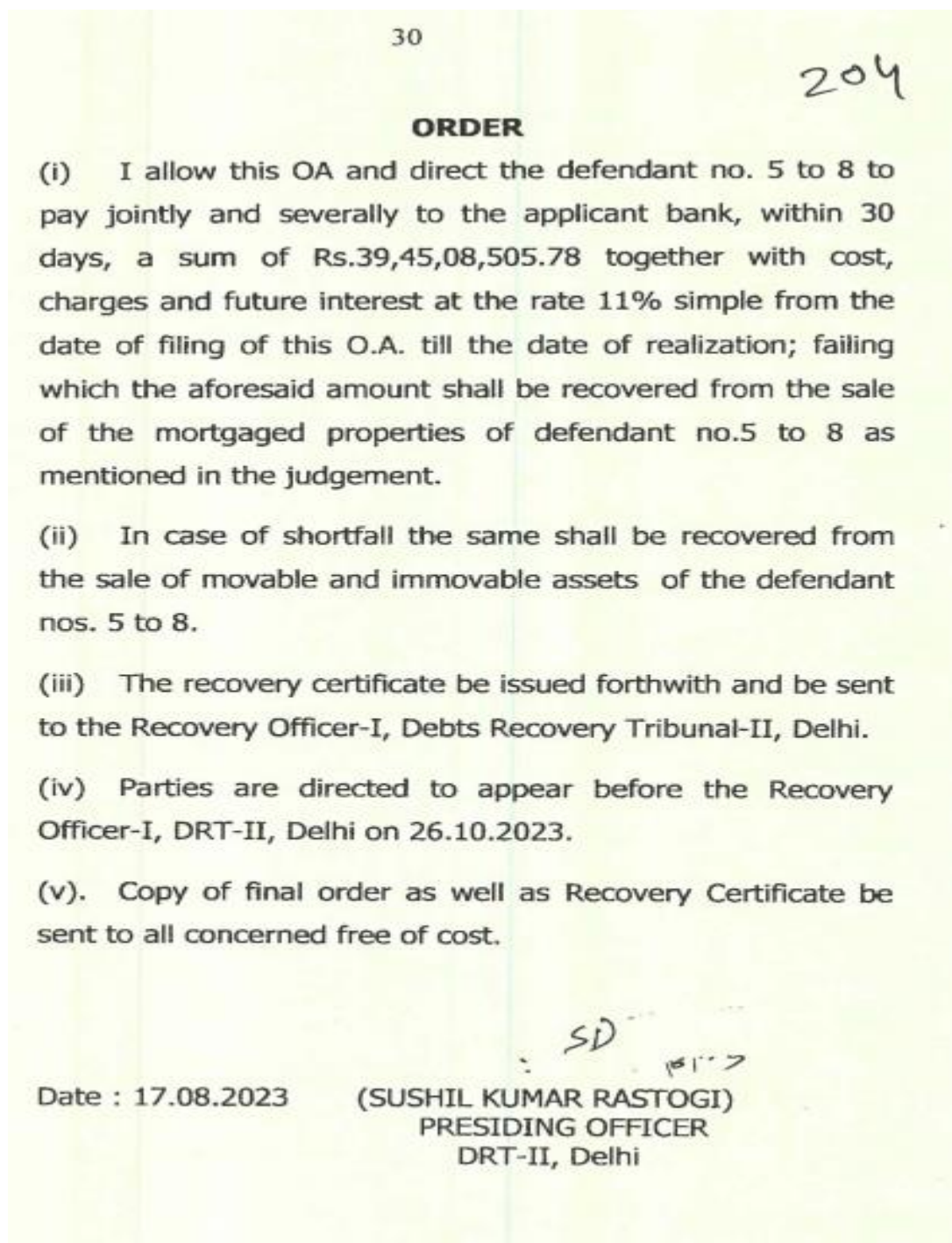
9.1. We have perused the documents as placed before us and have heard the Ld. Counsels for the Applicant. Our findings in the matter are as under: -

9.2. The material on record establishes that the Corporate Debtor executed the

Deed of Guarantee dated 18.02.2015 in relation to the financial facilities

availed by the Principal Borrower. The account of the Principal Borrower was classified as **NPA on 30.06.2015**, and the Corporate Guarantee was subsequently invoked by the Financial Creditor on **07.10.2019**. The execution of the guarantee and the status of the Corporate Debtor as guarantor are borne out from the contemporaneous documents placed on record.

- 9.3. The liability arising from the aforesaid financial transaction thereafter came to be adjudicated by the **Hon'ble DRT-II, Delhi in O.A. No. 934/2019**. The Hon'ble DRT, after considering the oral and documentary evidence, recorded that the financial assistance had remained unpaid and that the concerned defendants were jointly and severally liable. Accordingly, by **Final Order dated 17.08.2023**, appearing at **page 30 of the Hon'ble DRT Judgment**, Defendant Nos. 5 to 8 were directed to pay, jointly and severally **Rs.39,45,08,505.78**, together with costs, charges and future simple interest at **11% per annum from the date of filing of the O.A. till realization**. The Hon'ble DRT further directed issuance of the Recovery Certificate forthwith. The relevant portion of the Final Order passed by the Hon'ble DRT-II, Delhi in O.A. No. 934/2019 is reproduced hereinbelow:



9.4 It is noted that the Corporate Debtor was **Respondent No. 6** in said judgement of Hon'ble DRT; the relevant paragraph of the Recovery Certificate is also reproduced below:

“The OA No. 934/2019 is allowed and directed the defendant No.

5 to 8 to pay jointly and severally to the applicant bank, within 30

days, a sum of Rs. 39,45,08,505.78/- together with cost, charges and future interest at the rate of 11 % simple from the date of filing of this OA till the date of realization, failing which the aforesaid amount shall be recovered from the sale of the mortgaged properties of defendant No. 5 to 8 as mentioned in the judgement.

In case of shortfall the same shall be recovered from the sake of moveable and immoveable assets of the defendants No. 5 to 8.

Parties are directed to appear before Recovery Officer 1, Recovery Officer, DEBTS RECOVERY TRIBUNAL DELHI (DRT-2) ON 26/10/2023.

The Recovery Officer shall realize the amount as per this Certificate in the manner and mode prescribed under Section 25 to 28 of the Recovery of Debts. Due to Banks and Financial Institutions Act, 1993 (as amended from time to time) from the above-named Certificate Debtors.

This Certificate has been issued under my signature and seal of the Tribunal on this 23/08/2023.”

9.5 Pursuant thereto, the recoverable amount stood quantified at Rs.55,94,13,061.20, together with further simple interest at 11% per annum and costs. The Financial Creditor, in the Amended Part IV of Form 1, has stated the total amount claimed to be in default is **Rs.68,48,63,360.22/-** as on 31.08.2025 and has specified the **date of default as 23.09.2023**. Quite clearly the present application is based upon the Judgement of Hon'ble DRT.

- 9.6 What assumes significance is that the Corporate Debtor has not placed before us any document or order showing that the aforesaid adjudication or the consequential Recovery Certificate has been **challenged, stayed, modified or set aside by any competent forum**. The adjudicated liability, therefore, continues to subsist and has attained finality qua the Corporate Debtor.
- 9.7 In this background, we are unable to accept the attempt of the Corporate Debtor to reopen the underlying transaction by raising objections relating to the Security Trustee arrangement, power of the Applicant to initiate any legal action without first discharging the Security Trustee, execution of the Amended and Restated MRA dated 18.02.2015, alleged non-release of CDR facilities, the Monitoring Committee proceedings dated 30.04.2015, SBI's email dated 02.05.2015 and the Financial Creditor's email dated 11.05.2015. These objections pertain to matters antecedent to the crystallisation of the liability, were raised by the Corporate Debtor before Ld. DRT and were dealt with by the Ld. DRT in its order and, therefore, cannot be considered in isolation from the subsisting adjudication referred to above.
- 9.8 This Adjudicating Authority, while exercising jurisdiction under **Section 7 of the Code, is not sitting in appeal over the judgment of the Hon'ble DRT or the Recovery Certificate issued pursuant thereto**. In the absence of any order of a competent appellate forum interfering with the same, it would neither be appropriate nor permissible for this Tribunal to undertake a collateral re-examination of the correctness of the adjudicated debt or to determine afresh the objections concerning the underlying loan and

restructuring documents. Accepting such a course would, in substance, amount to sitting in appeal over a subsisting adjudication of a competent Tribunal, which is beyond the scope of the present proceedings.

9.9 For the same reason, the allegations concerning the manner of execution of the MRA and alleged non-disbursement of Rs.3.76 Crores towards non-fund-based facilities and Rs.0.20 Crore towards fund-based facilities cannot, in the present Section 7 proceedings, displace the crystallised financial liability. The appropriate remedy against an adverse adjudication was to assail the same before the forum prescribed by law. No material demonstrating that such adjudication has ceased to operate has been placed before us by the Respondent.

9.10 The principal objection of the Corporate Debtor is that the guarantee was invoked on 07.10.2019 and therefore the Petition filed in 2026 is barred by limitation. Had the matter rested only upon the invocation dated 07.10.2019, the objection would have required consideration on that footing. However, the subsequent material development is the Hon'ble DRT Judgment dated 17.08.2023 and the Recovery Certificate dated 23.08.2023, which remain unsatisfied.

9.11 In ***Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddy & Anr., Civil Appeal No. 1650 of 2020, decided on 04.08.2021***, the Hon'ble Supreme Court held that a judgment/decree for money or a Recovery Certificate in favour of a Financial Creditor gives rise to a **fresh cause of action** to initiate proceedings under Section 7, provided the

decretal/certified dues or part thereof remain unpaid. The relevant abstract of the said Judgment is reproduced below: -

“138. A final judgment and order/decreed is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decreed, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the Recovery Certificate.

.....

143. Moreover, a judgment and/or decreed for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decreed or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decreed and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”

9.12 Applying the aforesaid principle to the present case, the Hon’ble DRT passed its Judgment on **17.08.2023** and the Recovery Certificate was issued on **23.08.2023**. The present Petition having been filed on **25.02.2026**, i.e.,

within three years from the issuance of the Recovery Certificate, **is within limitation**. Accordingly, the objection of the Corporate Debtor that limitation ought to be reckoned only from invocation of the Corporate Guarantee on 07.10.2019 cannot be accepted.

9.13 As regards the Corporate Debtor's liability as Corporate Guarantor, the Deed of Guarantee dated 18.02.2015 and its invocation dated 07.10.2019 are material. The Hon'ble Supreme Court ***Laxmi Pat Surana v. Union Bank of India & Anr., Civil Appeal No. 2734 of 2020***, has recognised that proceedings under Section 7 can be maintained against a corporate person which has furnished a guarantee for a financial debt and that the liability of the guarantor gets triggered upon default by the principal borrower. Therefore, the Corporate Debtor's status as Corporate Guarantor does not constitute any impediment to the maintainability of the present Petition. The relevant abstract of the said Judgment is reproduced below: -

“22. Thus understood, it is not possible to countenance the argument of the appellant that as the principal borrower is not a corporate person, the financial creditor could not have invoked remedy under Section 7 of the Code against the corporate person who had merely offered guarantee for such loan account. That action can still proceed against the guarantor being a corporate debtor, consequent to the default committed by the principal borrower. There is no reason to limit the width of Section 7 of the Code despite law permitting initiation of CIRP against the corporate debtor, if and when default is committed by the

principal borrower. For, the liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively.”

9.14 Thus, merely because security was separately created by the Corporate Debtor does not, without a contractual stipulation to that effect being established, convert an otherwise unconditional Corporate Guarantee into a liability restricted only to the value of such security. More importantly, in the present case, the liability against the Corporate Debtor has already been adjudicated jointly and severally by the Hon'ble DRT. We therefore find no merit in this objection.

9.15 The Financial Creditor has also placed on record the NeSL Information Utility records at pages 247, 259 And 265 of the application in relation to the Corporate Debtor. These records reflect the submission of defaults by Kotak Mahindra Bank Limited in respect of Avarsekar And Sons Private Limited, with the status of authentication of the defaults recorded as **“AUTHENTICATED.”**

9.16 The Corporate Debtor has relied upon the judgment of the Hon'ble Bombay High Court in ***Ajeet Madhukar Mulay v. Abhyudaya Co-operative Bank Limited & Ors., Commercial Arbitration Petition No. 843 of 2024, 849 of 2025 and 1053 of 2025*** decided on **09.06.2026**, and has particularly relied upon paragraph **67(a)** thereof, which is reproduced hereunder:

“67. In light of the above discussion, the conclusion is summarised as under:

(a) The continuation of the arbitration proceedings against the Petitioners despite the stay of “debt” under Section 96 of IB Code on the applications filed by the other guarantors disregards the binding judicial pronouncement of Hon'ble Apex Court and this Court and is violative of fundamental policy of Indian law under Section 34(2)(b)(ii) of Arbitration Act.”

9.17 While relying upon the above referred judgment of Hon'ble Bombay High Court, Ld. Counsel appearing on behalf of the Corporate Debtor argued at the time of the hearing held on 25.08.2026 that there are certain applications filed under Section 95 of IBC, 2016 by the State Bank of India in respect of certain individual guarantors i.e. in respect of Mr. Kishore Krishnarao Avarsekar, Mrs Pushpa Kishore Avarsekar, Mr. Abhijit Kishore Avarsekar and Mr. Ashish Kishore Avarsekar, which are pending before different courts of Mumbai Bench of this Tribunal and therefore, there is an interim moratorium under Section 96 of the Code in force and therefore, in view of the above referred judgement of Hon'ble Bombay High Court, this CP cannot continue.

9.18 We have considered the aforesaid judgment and the reliance placed thereon by the Corporate Debtor. The said judgment was rendered in the context of arbitral proceedings which were continued against the petitioners despite the operation of an interim moratorium under **Section 96 of the Code** in proceedings initiated in respect of other guarantors. It was in these peculiar facts that the Hon'ble High Court held that continuation of the arbitration

proceedings, despite the stay of the debt under Section 96, could not be sustained.

9.19 In regard to the above plea of the Corporate Debtor, we rely upon the judgment of Hon'ble Bombay High Court in ***IL & FS Financial Services Limited v. Serveall Constructions Private Limited & Ors.***, Summons for Judgment No. 12 of 2019 in Commercial Summary Suit No. 238 of 2019, decided on **06.04.2026**. In the said judgment, after considering the decisions of the Hon'ble Supreme Court in ***Laxmi Pat Surana v. Union Bank of India & Anr.***, the Hon'ble High Court reiterated that the liability of the principal borrower and the surety is **co-extensive**. Further, the Hon'ble High Court held that the words "any debt" used in Section 96 of IBC cannot be stretched to the benefit of the debt of the principal borrower against whom no proceedings under IBC are initiated. Hon'ble High Court further held that the benefit of Section 96 of IBC would not apply to the principal borrower against whom no proceedings have been initiated under the Code. The relevant paragraphs of the said judgement are reproduced hereunder:

"45. Thus, the same basic principles under the Contract Act would apply to ascertain the benefit of the interim moratorium when IRP proceedings are initiated under Sections 94 or 95. In view of the legal principles, as discussed above, the liability of a guarantor and the principal borrower is coextensive; hence, a resolution plan approved in the IRP proceedings of the guarantor will enure to the benefit of only the guarantor, and he may be discharged of his liability under the terms of the guarantee. However, the principal borrower against whom no proceedings are initiated under the IB Code will not have its liability discharged under the resolution plan of the guarantor. The adjudication of the liability of the principal

borrower would therefore fall within the jurisdiction of the civil court when no proceedings under the IB Code are initiated against the principal borrower. The company law tribunal would not have any jurisdiction to adjudicate the liability of a principal borrower when no proceedings under the IB Code are initiated against the principal borrower. Hence, the words “any debt” used in Section 96 of the IB Code cannot be stretched to benefit the debt of the principal borrower, against whom no proceedings under the IB Code are initiated. Therefore, the benefit of the interim moratorium under Section 96 in the IRP proceedings for the personal guarantor cannot be extended to a principal borrower in a summary suit for recovery of amounts when no proceedings under the IB Code are initiated against such borrower.

46. Hence, in the present case, the interim moratorium imposed under Section 96 of the IB Code in the IRP proceedings initiated for defendants nos. 3 and 4, who are personal guarantors in the present suit, would not apply to defendant no. 1, who is the principal borrower in the present suit against whom no proceedings have been initiated under the IB Code. Hence, this suit shall remain stayed only against defendants nos. 2 to 4 until the respective moratorium orders are operative.”

9.20 It is important to note here that vide the Insolvency and Bankruptcy Code (amendment) Act, 2026, w.e.f. 26.05.2026, the provisions of Section 96 in regard to the applicability of interim moratorium have been made non-applicable where application is filed for initiating Insolvency Resolution Process in respect of a personal guarantor to a Corporate Debtor. The said amendment has been made by inserting sub Section (4) to Section 96. The said sub-Section is reproduced hereunder: -

“(4) The provisions of this Section shall not apply where an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor.”

9.21 We also notice the judgment of the Hon'ble Bombay High Court in **Tata Capital Financial Services Limited v. Neel Motors LLP & Ors.**, Commercial Arbitration Petition No. 620 of 2021, decided on 24.07.2026. The said judgment arose in the context of proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 and the effect of the amended Section 96(4) of the Code upon pending insolvency proceedings against personal guarantors. The Hon'ble High Court held that, with effect from 26.05.2026, the interim moratorium under Section 96 would cease to operate in respect of applications concerning personal guarantors to corporate debtors and accordingly proceeded to consider the remedies available under the Arbitration Act.

9.22 In view of the aforesaid legal position, the reliance placed by the Corporate Debtor on **Ajeet Madhukar Mulay (supra)** does not advance its case in the facts of the present Petition. On the contrary, the principles reiterated in **IL & FS Financial Services Limited (supra)** recognise the separate and co-extensive liability arising under a contract of guarantee. Moreover, after amendment of Section 96 of the Code, the interim moratorium in respect of individual insolvency processes initiated against the individual guarantors in respect of the same, will not apply to the corporate guarantor herein. The said legal position has been affirmed by Hon'ble Bombay High Court in the matter of Tata Capital (Supra). In the present case, the Corporate Debtor

executed the Deed of Guarantee dated 18.02.2015, the guarantee was invoked on 07.10.2019, and the liability thereafter stood adjudicated by the Hon'ble DRT vide Judgment dated 17.08.2023, followed by the Recovery Certificate dated 23.08.2023. Accordingly, the aforesaid judgment does not come to the aid of the Corporate Debtor.

9.23 The aforesaid judgment, therefore, does not dilute the maintainability of the present proceedings under Section 7 against a Corporate Guarantor. Rather, it indicates that the existence or pursuit of another remedy does not, by itself, prohibit recourse to a remedy otherwise available under law, subject of course to the applicable statutory moratorium and prohibition against double recovery. In the present case, the liability of the Corporate Debtor stands crystallised and the Recovery Certificate remains subsisting; hence, the mere pursuit of recovery proceedings cannot by itself constitute a ground to reject the present Petition.

9.24 During the course of hearing on 21.07.2026, the Corporate Debtor raised an objection regarding the amount recovered by the Financial Creditor in the liquidation proceedings of the Principal Borrower, i.e. Unity **Infraprojects Limited**. In response thereto, the Financial Creditor has filed an Additional Affidavit dated 27.07.2026, placing on record that, till the date of the said Affidavit, it had received only a sum of Rs.20,26,580.11/- (Rupees Twenty Lakhs Twenty-Six Thousand Five Hundred Eighty and Eleven Paise) in the liquidation proceedings of the Principal Borrower.

9.25 We have considered the aforesaid disclosure. The mere receipt of Rs.20,26,580.11 from the liquidation estate of the Principal Borrower does

not extinguish the liability of the Corporate Debtor under the Corporate Guarantee. The Hon'ble Supreme Court in ***Laxmi Pat Surana v. Union Bank of India & Anr., Civil Appeal No. 2734 of 2020, decided on 26.03.2021***, has reiterated that the liability of the principal borrower and the surety is co-extensive and that proceedings against them may be pursued separately or simultaneously; however, the creditor cannot recover more than the amount actually due. Any amount recovered from one is therefore required to be appropriately adjusted while determining the balance recoverable from the other.

9.26 We are, therefore, satisfied that the Financial Creditor has established the existence of a **financial debt** within the meaning of Section **5(8)** and **default** within the meaning of Section **3(12)** of the Code. The Petition filed on **25.02.2026** is within limitation and satisfies the requirements of **Section 7 of the Insolvency and Bankruptcy Code, 2016**. Moreover, the objections raised by the Corporate Debtor do not constitute a ground for rejection of the Petition.

9.27 Financial Creditor has also proposed the name of an Insolvency Professional i.e. Mr. Pramod Dattaram Rasam, an Insolvency Professional, having Registration No IBBI/IPA-001/IP-P00722/2017-2018/11259 and Authorization for Assignment (AFA), which is valid upto 30.12.2026 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.

9.28 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) 252/MB/2026** filed under Section 7 of IBC, 2016, by **Kotak Mahindra Bank Limited**, the Applicant (FC), for initiating CIRP in respect of **Avarsekar And Sons 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. Pramod Dattaram Rasam, having Registration No. **IBBI/IPA-001/IP-P00722/2017-2018/11259** and **e-mail address: pdrasam@gmail.com** having valid Authorisation for Assignment up to 31.12.2026 (as per IBBI site) as the IRP to carry out the functions under the IBC.

VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.

VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17

or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.

VIII. That the IRP/IP shall submit to this Tribunal quarterly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.**3,00,000/-** (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

X. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the Corporate Debtor.

XI. The IRP is directed to issue notice of Admission upon all the statutory authorities of Corporate Debtor without Fail.

XII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

XIII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.

XIV. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)**

//S. Dubey//

**Sd/-
SAMEER KAKAR
MEMBER(TECHNICAL)**