NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P2

C.P.(IB)1336/(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **11.09.2026**

NAME OF THE PARTIES:- **Abhyudaya Co-operative Bank Limited**

v/s

A.Navinchandra Steels Private Limited

Under Section 7 of the IBC

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

//Sumant//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

VI

C.P. (IB)/1336/MB/2025

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

Abhyudaya Co-Operative Bank Ltd

MSCS/CR/249/2007

36/2512, Abhyudaya Nagar, G D

Ambekar Marg, Mumbai - 400033

…Financial Creditor

V/s

A.Navinchandra Steels Private Limited

[CIN No. U51420MH2000PTC127487]

Paras Commercial Office No.- 1A,

Prestige Residency, Thane (M Corp) ,

Kasarvadavali, Thane -400615

And

704, Ecstasy Commercial Building,

City of Joy, Nirmal Life Style

Ltd., Jata Shankar Dosa Marg,

Mulund (West) , Mumbai

400 080.

...Corporate Debtor

Pronounced: 11.09.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Mr. Madhur Rai a/w Adv. Mr. Gautam Tiwari i/b PRS Legal.

For Respondent: Adv. Mr. Mathews Nedumpara, Adv Ms. Hemali M. Adv. Mr. Satsang J. Tailor, Mahesh Parab i/b Nedumpara & Nedumpara.

ORDER

[PER: CORAM]

1. PREFACE

1.1. The Respondent in this Application has raised a challenge regarding the constitutional validity and statutory applicability of the Insolvency and Bankruptcy Code, 2016 (IBC).

1.2. At the outset, it is a settled principle of law that the National Company Law Tribunal (NCLT), being a creature of statute under Section 408 of the Companies Act, 2013, possesses limited jurisdiction to adjudicate disputes arising out of or in relation to insolvency resolution process under Section 60(5) of the Code. As a quasi-judicial body, this Adjudicating Authority lacks the statutory power or competence to perform judicial review over the *vires* or constitutional validity of a

Parliamentary enactment. Furthermore, the constitutional validity of the Code and its core provisions stand conclusively settled by the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. v. Union of India (2019)*. Consequently, the preliminary objection raised by the Respondent regarding the statutory validity of the Code is legally untenable before this Bench and is accordingly rejected as non-maintainable. A detailed analysis in this respect is contained in the later part of this order.

2. BACKGROUND

2.1. C.P.(IB) No.1336/MB/2025 (Application) was filed on 25.10.2025 by Abhyudaya Co-Operative Bank Ltd , the Financial Creditor 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 A.Navinchandra Steels Private Limited, the Corporate Debtor, having CIN No. U51420MH2000PTC127487

2.2. This Application has been affirmed by one Mrs. Shubhangi Matale , authorised signatory of the Applicant vide Resolution passed before the Adminstrator and Advisory Committee held on 17.04.2025

2.3. As per Part IV of the Application, the amount claimed to be in default is Rs.70,71,96,999.99/- (Rupees Seventy Crore, Seventy-One Lakhs Nintey-Six Thousand Nine Hundred Ninty-Nine and Paise Nintey-Nine Only) .

2.4. As per Part IV of the Application, the date of default is stated as 28.06.2025 .(vide Additional Affidavit dated 31.01.2025)

2.5. The Applicant has proposed the name of Mr. Anil Vrijdas Rajkotia, an Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P01045/2017-2018/11718, 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.

3. <u>CONTENTIONS OF APPLICANT (FC)</u>

3.1. The Petitioner / Financial Creditor is a Multistate Co-operative Bank duly registered with the office of Central Registrar of Co-operative Societies, New Delhi.

3.2. The Financial Creditor had renewed a Cash credit facility and a letter of credit facility vide sanction letter dated November 01, 2019 amounting to Rupees Thirty-Five Crore and Fifteen Crore respectively to the Corporate Debtor of on various dates.

3.3. The credit facility availed by the Corporate Debtor is secured by way of hypothecation and registered mortgage over the properties of the Corporate Debtor.

3.4. The Corporate Debtor has defaulted in the payment of outstanding loan amount. Therefore, the account was declared as NPA on 13.02.2020.

3.5. The Financial Creditor had sent the recall notice to the Corporate Debtor on 05.07.2021 for recalling the sum of Rs. 40,82,30,530.79 towards Cash Credit facility along with the sum of Rs. 11,38,29,158.00 towards Letter of Credit facility.

3.6. Since the Corporate Debtor committed default in repayment of outstanding, the Petitioner filed Arbitration Dispute u/s 84 of Multi State Co-operative Societies Act, 2002 before the Ld. Arbitrator, appointed by the Central Registrar, New Delhi, for adjudication of its disputes. The said Ld. Arbitrator vide its Award dated 05.11.2022 inter-alia directed its Borrower (i.e. the Corporate Debtor) and its guarantor to pay the sum of Rs. 52,89,51,162.15/-calculated as on 30.06.2021 along with further interest with effect from 01.07.2021 till payment and/or realization.

3.7. The petitioner vide its Notice dated 18.06.2025 inter-alia demanded the sum Rs. 70,71,96,999.99/- (as per the Award dated 05.11.2022) calculated as on 31.03.2025, with interest from 01.04.2025, within a period of 10 days (i.e. on or before 28.06.2025) of receipt of the said notice.

3.8. The Corporate Debtor (CD), despite receipt of the said notice, committed default in paying the demanded amount. Hence the date of default is 28.06.2025.

3.9. The Record of Default issued by NeSL states that the date of default is 13.02.2020, which means that Letter of Credit (LC) devolved on 13.11.2019 and became NPA on 13.02.2020, when it was overdue for more than 90 days.

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

a) Copy of Board Resolution dated 17.04.2025

b) Copy of certificate of registration of charge issued by registrar of companies
c) Copy of Arbitration Award dated 05 .11.2022
d) Copies of record of default.
e) Copies of security document sexecuted by Corporate Debtor while availing loan of Rs. 3500 Lakh
f) Copy of extracts obtained from Ministry of Corporate Affairs - Master Data of the Corporate Debtor.
g) Copy of Notice dated 18.06.2025
h) Copy of Recall notice dated 05.07.2021
i) Registered Mortgage Deeds dated 05.03.2011, 28.03.2013, 12.07.2016 and 27.10.2017 executed by the Corporate Debtor.
j) Demand Notice dated 18/06/2025 Issued by the Financial Creditors inter alia claiming a sum of Rs. 70,71,96,999.99 calculated as on 31.03.2025 along with interest from 01/04/2025,
k) Recall Notice dated 05/07/2021 issued by the Financial Creditors inter-alia claiming a sum of Rs. 40,82,30,530.79 (towards Cash Credit facility) and Rs. 11,38,29,158.00 (towards Letter of Credit facility)
l) Demand Promissory Note dated 26/11/2019
m) Trust Receipt dated 26/11/2019
n) Hypothecation agreement relating to opening of Irrevocable without recourse letters of credit dated 26/ 11/2019.
o) Letter Undertaking dated 26/11/2019.

4. REPLY BY CORPORATE DEBTOR

4.1. A reply affidavit dated 16.02.2026 was filed by the Respondent duly affirmed by Mr. Mahesh Lalit Heliya, the Authorized Officer of the Respondent.

4.2. It is stated that the Respondent Company registered under the companies Act 1956, a company falling under the category of being an MSME unit, under Micro Small Medium Enterprises Development Act, 2006 (hereinafter in short as MSMED, Act) having its legacy entrenched in the market for more than 33 years. Hitherto, the Respondent Company was registered as an SSI Unit. Following the passage of the MSMED Act, 2006, the Company was registered as an MSME. The Respondent Company has been doing business in good faith and there is no doubt as to its credibility and good will until the business of the Respondent Company was spoilt by Petitioner Bank by their rigid and uncompromising attitude, approach and treatment. The Respondent Company and its sister concerns have shared a business relationship with the Petitioner Bank since 1990 and have actually paid interest to the tune of Rs. 300 crores to the Petitioner Bank since commencement of relations with the Petitioner.

4.3. It is stated that the instant Petition is hopelessly barred by limitation in view of Section 238A of IBC which lays down that.

"The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."

4.4. As per the Petition itself, the Amount claimed to be in default is as on 13.02.2020. The instant Petition has been filed on 25.10.2025 that is more than five years from the date of default admitted by the Bank. In view thereof, the Petition is time barred for action under the IBC 2016. The instant Petition deserves to be dismissed on this ground alone.

4.5. Further it is stated that the Arbitrator acted without jurisdiction since the Award was passed in violation of the express mandate of the MSME Notification, which required constitution of a stressed MSME Committee which would first examine the possibility of a corrective action plan for revival and rehabilitation of the stressed MSME. The Arbitration Award was passed in per curium the law for relief and rehabilitation of stressed MSMEs that was eventually settled by the Supreme Court it is order dated 01.08.2024 in favour of the Respondent Company [in CA/8336/2024 - in the matter of A. Navinchandra Steels Pvt. Ltd. & Anr. V. Union of India & Ors.] .

4.6. In the instant case, had the Arbitrator permitted the question of law as to the binding nature of the Notification to be settled, [as it eventually was by the Supreme Court in favour of the Respondent Company], there would have been no occasion to even conduct the proceedings since the

Petitioner Bank would have to first constitute a Committee, placed the Respondent Company's loan accounts before such Committee and attempt a revival and rehabilitation of the stressed MSME Respondent Company. Hence, at the very outset, the arbitration proceedings and its consequent award which forms the basis of this Petition is void, non est and never existed in the eyes of law being passed without jurisdiction

4.7. Furthermore, the Arbitrator was a unilateral (and illegal) appointee of the Bank, who conducted one-sided arbitration within the premises of the Petitioner Bank and his proceedings were entirely sponsored by the Petitioner Bank. In fact, the said Arbitrator heard (or probably is still hearing) numerous arbitrations matters all filed by the same Petitioner Bank against its borrowers. The question arises that even for the sake of argument, the Petitioner Bank was entitled to arbitration proceedings for recovery of its claim, why did not it not seek the Respondent's consent for the said arbitrator or in the alternative approach In such a circumstance, the fate of the Respondent Company in such one-sided proceedings was doomed from the start. The learned Arbitrator tore through the entire arbitration process and passed the arbitration award even before the High Court had issued Notice to the Union Government and Reserve Bank of India on the Respondent Company's Article 226 Petition seeking relief under the MSME Notification.

4.8. In such a scenario, where justifiable doubts could be raised as to the neutrality of the Arbitrator a one-sided award came to be passed in favour of the Petitioner Bank. For this reason, also, the purported

Arbitration award is illegal, void, without jurisdiction and the present petition which is based upon the Arbitration Award has no legal standing and deserves to be dismissed.

4.9. The Respondent Company challenged the illegal award before the Bombay High Court in Arbitration Petition No. 742 of 2023. The Bombay High Court has however, dismissed the said Arbitration Petition by order dated 12.02.2026 per in curium the law without considering the law settled by the Supreme Court of India in order dated 01.08.2024 in A.Navinchandra Steel (Supra). The Respondent Company is in the process of challenging order dated 12.02.2025 passed per in curium the law by the Bombay High Court in Arbitration Petition No 742/2025.

4.10. The aforesaid order of the Bombay High Court is also per in curium the provisions of the Fifth Schedule of the Arbitration & Conciliation Act, 1996 and also against the law settled by the Supreme Court in Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited (2019); in TRF Limited vs. Energo Engineering Projects Limited (2017) and by a five-judge Constitution Bench in Central Organization for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company.

4.11. It is stated that the Respondent Company A. Navinchandra Steel Pvt. Ltd., is an MSME, registered under the MSMED Act, 2006 and the Notifications issued thereunder. Therefore, the Respondent Company is entitled to the protection of the MSME Notification 11 No. S.O. 1432(E) dated 29.05.2015 ("the said Notification" or "the MSME

Notification"). In terms of the said Notification, it is the duty of the Bank/Lender/Financial Creditor to identify incipient stress, constitute a Stressed MSME Committee and place the sensed loan account(s) of the MSME Borrowers before such a committee for insolvency resolution. No recovery measures are permissible without the permission of the stressed MSME Committee that is constituted under Paragraph S (iv) (iii) of the said Notification which first examines the possibility of relief and revival in terms of the Notification. Only after the Committee has been constituted and if all efforts for relief of revival and rehabilitation fail, the Committee alone is empowered to direct all necessary measures for recovery from the Respondent Company. Hence, the Petitioner Bank's instant Petition under Section 7 of the IBC, 2016 seeking insolvency resolution for a allegedly unpaid claim of Rupees 70,71,96,999.99 is without jurisdiction and void ab initio. The principal reason being that as explained above, the Bank could not have invoked any recovery action in violation of the Notification dated 29.05.2015, which it did. The instant Petition deserves to be dismissed on this ground alone.

4.12. It is stated that The Respondent Company had on 17.12.2021, before the Arbitration proceedings had commenced and much before the filing of the instant IBC Petition invoked the jurisdiction of the Bombay High Court under Article 226 of the Constitution through Writ Petition WP/4620/2022 which sought protectory reliefs of revival and rehabilitation under the MSMED Act 2006 read with the MSME

Notification dated 29.05.2015 inter alia through a declaration that disputes under the MSMED Act, 2006 aid the MSME Notification are subject to jurisdiction of the Civil Court. All along this fact was duly brought to the Notice of the learned Arbitrator, by the Respondent Company who refused to consider the mandatory provisions of the Notification.

4.13. The Bombay High Court by order dated 11.01.2024 dismissed the Respondent Company's Article 226 Writ Petition WP/4622/2022. However, the aforesaid High Court Judgement was overturned by the Supreme Court in a landmark Judgement dated 01.08.2024 in CA/8232/2024 passed in the matter of M/s. Pro Knits v. The Board of Directors of Canara Bank and other has held that the MSME Notification is binding upon all Banks of the Country. In short, the Supreme Court in a proceeding inter parties held that the recovery action is void ab initio. The Respondent Company's Civil Appeal CA/8336/2024 [SLP(D)l9108/2024] challenging the Bombay High Court Judgement dated 11.01.2024 rejecting WP/4622/2022 was also heard along with CA/8232/2024 and came to be disposed by the same common judgement. By the aforesaid Judgement the Apex Court held as under:

"... . 13. In view of the above, it is absolutely clear that the Instructions for the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises as notified by the Central Government vide the Notification dated 29th May, 2015 in exercise of the powers conferred under Section 9 of the MSMED Act, as

revised by the RBI Notification dated 11th March, 2016, and the Master Directions i.e. the Reserve Bank of India (Lending to Micro, Small and Medium Enterprises Sector) Directions, 2016, issued by the Reserve Bank of India in exercise of the powers conferred by Section 2.1 and 35(A) of the Banking Regulation Act, having statutory force, are binding to all Scheduled Commercial Banks, licensed to operate in India by the Reserve Bank of India, as stated in the said Direction .... "

4.14. It is stated that the case of the respondent company falls squarely even within the restricted interpretation of the Supreme Court in Pro Knits (supra) and in subsequent judgement in Civil Writ Petition - WPC/684/2025 (in the matter of Shri Shri Samarth Construction and finance solution and another v. the board of directors of NKGSB bank and ors.

4.15. The MSME Notification dated 29.05.2015 placed a mandatory responsibility upon the lending Bank to identify incipient stress in MSME Borrower's loan account, to constitute a stressed MSME Committee and to place the loan account before such Committee for revival and rehabilitation. It is the case of the Respondent Company that the MSME Notification is absolutely binding, and it is the solemn duty of the Lender Bank to identify incipient stress in MSME Loan Accounts, to constitute a stressed MSME Committee in terms of the Notification and to place the stressed loan accounts before the Committee for relief and rehabilitation.

4.16. However, the Supreme Court of India while upholding the provisions of the Notification to be mandatory and binding upon Banks, also placed an onus upon the MSME Borrowers to intimate the Bank's with regard to incipient stress. As explained in the succeeding paragraphs, the continuously brought financial stress to the knowledge of the Petitioner Bank. In fact, even though the management of the Respondent Company (prior to declaration of its loan account as NPA) were not aware about the existence of MSME Notification, the correspondence detailed hereinbelow will demonstrate and establish that the Respondent Company all along brought its incipient stress / financial difficulties to the notice of the Petitioner Bank. In such a scenario it was for the Petitioner Bank to inform the Respondent Company about the Notification, to constitute a committee, and then to place the Respondent Bank's Loan Accounts before such Committee for relief of revival and rehabilitation in terms of the MSME Notification. The Bank was wilfully and deliberately neglected: (a) to inform the Respondent Company about the MSME Notification and (b) to constitute the MSME Committee and to place the loan accounts before such Committee after obtaining all necessary particulars from the Respondent Company as the Petitioner Bank deemed fit

4.17. In view thereof, it was the Petitioner Bank's duty to (a) identify incipient stress, and (b) place the Respondent Company's loan account before the specially constituted committee for revival and rehabilitation, in terms of the aforesaid judgements of the Supreme Court in Pro Knits

(Supra) and Shri Shri Swamy Samarth Construction and Finance Solution (Supra). However, the Petitioner Bank deliberately and wilfully neglected and failed in its mandatory duty of relief under the MSME Notification causing the business failure of the Respondent Company which could have otherwise been revived and rehabilitated in terms of the Notification.

4.18. Since the Petitioner Bank is itself responsible for the failure of the Respondent Company's business, it cannot take illegal advantage of its own wrongdoing and file the instant Petition under IBC 2016.

4.19. The Petitioner Bank without waiting for the Respondent Company's challenge to the illegal Arbitration Award to be heard and decided by the Bombay High Court has already been put into execution. Without prejudice to the Respondent Company's contention that the award itself is illegal, and that there is no final adjudication as to the Debt (if any) due and payable by the Respondent Company; the Petitioner Bank has willfully and deliberately concealed the fact that the arbitration award forming the basis of the instant Petition is already been put into execution. In fact, in furtherance of the arbitration award wrongfully and illegally passed by the arbitrarily appointed Arbitrator under Section 84 of the MSCS Act, 2002, the Petitioner Bank has already appointed Sale Officer under Section 97 of the MSCS Act, 2002. The said Sale Officer has moved to attach properties and Bank Accounts of the Respondent Company and its Directors. Since, the Petitioner Bank is already pursuing the fruits of the illegal and arbitrary award under the MSCS

Act, 2002, the Petitioner is precluded from launching a parallel proceeding under IBC 2016. The instant Petition deserves to be dismissed on this ground alone. The attachment orders passed by the Sale Officer of the Petitioner Bank in execution of the Arbitrator award dated 28.04.2025

4.20. The Respondent Company has instituted a Commercial Suit No. in the Bombay High Court invoking its Ordinary Original Civil Jurisdiction. In the said Suit, the Respondent Company has sought the declaration that the entire recovery actions at the hands of the Petitioner Bank are void ab initio and liable to be set aside and quashed, may, the Clock is liable to be put back. The Respondent Company has also sought damages to the tune of Rs.99,69,86,499/- for the injuries and loss sustained by them. Thus, the total claim of the Respondent Company as against the Bank far exceeds the claim of the Petitioner Bank of Rs. 70,71,96,999.99 and hence the entire debt claimed by the Petitioner Company is disputed by the Respondent Company. Hence the instant Petition is pre-maturely filed without the exact quantum of debt being first adjudicated and decided. The instant Petition deserves to be dismissed on this ground alone. A copy of Commercial Suit (St) No. 33569 of 2025 filed by the Respondent Company against the Petitioner Bank before the Bombay High Court.

4.21. Without prejudice to what has been stated herein before, even otherwise, the Insolvency and Bankruptcy Code, 2016 ("lBC 2016") is a one-sided legislation. Only a Financial Creditor or an Operational

Creditor can invoke the provisions of IBC, 2016 as person aggrieved. The Banking business is in the realm of Contract Law, and therefore the rights and obligations qua the Lender and the Borrower are mutual. The Borrower too is entitled to institute an action or suit against the Bank or Financial Institution, aggrieved by the breach of contract, culpable negligence, malicious action, or as in this case, breach of the statutory prohibition. However, under the provisions of IBC 2016, there is no provision at all where a Borrower, as a person aggrieved or actor, could enforce his remedies against a Bank or Financial Institution. Only the civil court alone can decide the inter se dispute between the Borrower and the Bank. In the instant case, as mentioned herein above, the Respondent Company has filed Commercial Suit (St) No. 33569 of 2025 against the Respondent Bank, the IBC, 2016 and this Tribunal is a forum non judice; having no jurisdiction to entertain and adjudicate two sided disputes between the Petitioner Bank and the Respondent Company. The instant Petition deserves to be dismissed on this ground alone.

4.22. Further it is stated that the disputes under the MSMED Act read along with the MSME notification subject to the jurisdiction of the civil court.

4.23. It is stated that the Bank is guilty of gross breach of contract, culpable negligence, and tortious action. The Respondent Company instituted a Commercial Suit (St) No. 33569 of 2025 in the Bombay High Court invoking its Ordinary Original Civil Jurisdiction. In the said Suit, the Respondent Company has sought the declaration that the entire action at the hands of the Bank is void ab initio and liable to be set aside and quashed, may, the Clock is liable to be put back. The Respondent Company have also sought damages to the tune of Rs.99,69,86,499/- for the injuries and loss sustained by them.

4.24. The Petitioner Bank has filed the instant Petition under Section 7 of the IBC, 2016 seeking insolvency resolution for an allegedly unpaid claim of Rupees 70,71,96,999.99. The instant Company Petition is without jurisdiction and void ab initio. The reason being that as explained above, the Bank could not have invoked any recovery action in violation of the Notification dated 29.05.2015. It is inter alia for this reason that our client has instituted the aforesaid Suit in the Bombay High Court on its original side. In the suit, the gross breach of contract, culpable negligence, malicious and tortious action has been elaborated, so too the violation of the notification dated 29.05.2015 at the hands of the Bank.

4.25. Without prejudice to whatever is stated herein before, the Respondent Company's seeks to highlight the massive injustice suffered, complete miscarriage of justice at the hands of the Petitioner Bank in the succeeding paragraphs herein below.

4.26. The Respondent Company is an MSME engaged in the business of steel products. For the execution of is various projects, the Respondents availed business finance and loans from the Petitioner Bank. The loan facilities were renewed from time to time (mostly on an annual basis). A copy of the last Loan Sanction agreement dated

01.11.2019 issued by the Petitioner Bank which clearly records the Respondent Company as an MSME.

4.27. It is the case of the Respondents that the Respondent Company has a track record spanning 33 years. However, due to various reasons detailed herein, the business of the MSME faced financial stress which caused financial difficulties in the business. However, as detailed in the instant Suit, the Respondents kept pleading for relief and assistance as eligible MSMEs. However, far from extending any kind of help the Petitioner Bank summarily and consistently rejected every single request for relief, rehabilitation and restructuring. In fact, far from providing any relief, the Petitioner Bank continued to fleece the Respondent Company with excessive interest even during the COVID-19 pandemic. The instant Suit seeks reliefs and damages caused to the Respondents on account of the tortious, mala fide and illegal actions of the Bank which only led to the eventual collapse of the MSME Business.

4.28. As mentioned herein before, the Respondent is an MSME registered under the MSMED Act, 2006. Section 9 & 10 of the said Act read along with the Notifications issued from time to time by Government of India along with those issued by the Reserve Bank of India provide with a framework for the promotion, facilitation, development and the protection of the business of MSMEs. In exercise of its powers under Section 9 of the said Act, the Ministry of MSME, Government of India, issued Notification no. S.O. 1432 18 dated 29.05.2015 ("The MSME Notification" or "The Notification dated 29.05.2015"). The said notification inter alia provided for (a) Framework for resolution of Stressed Assets (b) Formation of Committee(s) for Stressed MSMEs for implementation of the said Framework (c) Provision of a Corrective Action Plan for eligible MSMEs (d) Provision for Restructuring of the eligible MSME loan account. The Respondent having the status of registered MSME is entitled to the benefits of the aforesaid Framework for resolution of Stress Assets in respect of the loan facilities availed by the Respondent from the Petitioner Bank. A copy of the Government of India Notification No. S.O. 1432 dated 29.05.2015 is attached to the Reply.

4.29. The MSME Notification was issued by the Central Government under Section 9 of the MSMED Act, placed before both Houses of Parliament and duly received assent of both Houses of the Parliament. It is therefore, a statutory notification, may, de-jure an Act of Parliament. Besides, the Reserve Bank of India in exercises of its powers under the Banking Regulation Act, 1949 and being the regulator of Banks in the country also issued Notification No. RBI/2015-16/338 FIDD.MSME & NFS.BC.No.21/06.02.31/2015-16 dated 17.03.2016 giving directions to all Banks in India to implement the Government of India MSME Notification dated 29.05.2025 albeit by watering it down. A copy RBI Notification No. RBI/2015-16/338 FIDD.MSME & NFS.BC.No.21/06.02.31/2015-16 dated 17.03.2016 is hereto annexed and marked as Exhibit-I.The Respondent submits that the MSME Notification provides for constitution of a stressed MSME Committee that is mandatory as per Paragraph 2 of the Notification. In fact, such Committee is even tasked to identify stressed MSME loan accounts and to consider their case for corrective action plan as per the provisions of the said Notification. Furthermore, Paragraph 1.2 of the said notification further provided that any Micro, Small or Medium Enterprise may voluntarily initiate proceedings under this Framework if the enterprise reasonably apprehends failure of its business or its inability to pay debts, before the accumulated losses of the enterprise equal to half or more of its entire net worth.

4.30. In fact, in the instant case, the Respondent Company faced with incipient stress repetitively brought the financial difficulties this fact to the Petitioner Bank. Yet, the Petitioner Bank despite full knowledge of incipient stress faced by the Respondent Company never ever constituted a committee for the placement of the Respondent's loan accounts before it for revival and rehabilitation in terms of the said Notification. In fact, despite continuous correspondence with the Respondents, the Petitioner Bank never even informed about the existence of such beneficial Notification despite being legally bound to give extend its benefits to the Respondent Company.

4.31. Being a preventive and remedial, the MSME Notification is a piece of welfare legislation that are mandatory in nature. However, a search on the Petitioner's website reveals that the Bank has never seemed to have constituted any Committee nor has any standing committee in place for implementation of the Framework specified by the said

Notification. In fact, the MSME Notification makes it clear that Banks/NBFCs are restrained and prohibited from resorting to any kind of recovery action, especially action under the provisions of the SARFAESI Act, 2002 and the IBC 2016 prior to placement of the MSME's case before the stressed MSME Committee in terms of the said Notification.

4.32. The Respondent submits that the important events stated below highlight continuous non-cooperation, may deliberately mala fide and tortious acts of the Petitioner Bank despite the full knowledge of existence of incipient stress being faced by the Respondent Company that severely weakened the business of the Respondent Company leading to its collapse during the COVID 19 pandemic. In view of the incipient stress faced by the Respondent's business due to a variety of factors including cyclical downturn of business, the Respondents sought relief by way of reduction of debt burden, and consequential interest. By letter dated 25.05.2015, the Respondents requested the Petitioner Bank to permit a repayment of Letter of Credit amounting to Rs.15 Cr. and a part of the Working Capital Term Loan amounting to Rs.6.40 Cr. totalling to Rs.21.40 Cr. by adjustment of the Fixed Deposit Receipts to the tune of Rs.20.33 Cr from A. Navinchandra Steels Pvt. Ltd and Rs.1.17 Cr. from Akai Steels Pvt. Ltd. However, by letter dated 20.06.2015, this bono fide request was wrongfully denied by the Petitioner Bank without any justification. A copy of the letter dated 25.05.2015 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - T. A copy of the letter dated 20.06.2015 by the Petitioner Bank to the Respondent Company is annexed as Exhibit - K.

4.33. The Petitioner Bank which was under a statutory duty to identify incipient stress and constitute a committee for the resolution of stress, instead appropriated the entire Fixed Deposit to the tune of over Rs. 7 crores remaining with them. The Petitioner Bank also appropriated to itself shares worth Rs. 45 lakhs of the Bank itself which the Respondent had given as security. Meanwhile, as stated above, the Ministry of MSME Government of India issued Government of India Notification No. S.O. 1432 dated 29.05.2015 which places a statutory responsibility upon Banks to identify incipient stress in MSME loan accounts, to constitute a Stressed MSME Committee and to place such incipiently stressed MSME loan Accounts before the specially constituted MSME Committee.

4.34. The Respondent Company made a request to the Petitioner Bank by letter dated 11.06.2015 for restructuring and substantially bringing down the loan outstanding by repayment of LC & Working Capital Term Loans as well as Cash Credit Account overdraft by adjustment of FDRs held by the Bank. Such an operation would have brought substantial relief of interest savings of up to Rs. 2.6 crores to the Respondent Company and restored it to profitability. However, by letter dated 26.6.2015 this request was also denied by the Petitioner Bank. A copy of the letter dated 11.06.2015 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - L. A copy of the letter dated

26.6.2015 by the Petitioner Bank to the Respondent Company is annexed as Exhibit - M.

4.35. The Respondent Company made a further representation by letter dated 26.06.2015 to the Head Office of the Petitioner Bank regarding repayment of WCTL/MTCL & CC against the Respondent Company's Fixed Deposit Receipts held by the Bank as collateral. A copy of the letter dated 3.7.2015 by the Respondent Company to the Petitioner Bank is hereto annexed as Exhibit - N. The Respondent Company made a further representation by letter dated 13.07.2016 to the Head Office of the Petitioner Bank regarding grading of the Respondent Company's Cash Credit File and refund/re-credit of a sum of Rs. 2,38,7327/-. There was no response by the Petitioner Bank to the Respondent's bona fide request. A copy of the letter dated 13.07.2016 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - 0.

4.36. The Respondent Company made a further representation dated 15.05.2017 seeking to sell two mortgaged properties - Satra Plaza Offices No. 56 & 57 (in a falling property market) for Rs.1.25 Crores and Rs.1.36 Crores respectively in order to bring down the Cash Credit outstanding by Rs. 2.61 Crores. However, again, there was no response by the Petitioner Bank to the Respondent's bona fide request. A copy of the letter dated 13.07.2017 by the Respondent Company to the Petitioner Bank is hereto annexed as Exhibit- P. 26.The Respondent Company made a further representation by letter dated

16.10.2017 to the Petitioner Bank seeking reversal and recredit of excess interest charged to the tune of Rs. 1,98,928/-. However, there was again no response by the Petitioner Bank to the Respondent's bona fide request. A copy of the letter dated 16.10.2017 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - Q.

4.37. The Respondent Company made a further representation by letter dated 15.01.2018 pleading with the Petitioner Bank. The Respondents pleaded that excessive rates of interest being charged during slackness in business cycle were very detrimental to the Respondent Company's business and that the Bank ought to bring down the interest rates in line with those offered by other Banks. However, there was no response by the Petitioner Bank to the Respondent's bona fide request. A copy of the letter dated 15.01.2018 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - R. 22

4.38. The Respondent Company made a further representation by letter dated 02.05.2018 to the Petitioner Bank once again seeking reversal and recredit of excess interest being charged for an amount of Rs. 1,98,928/-. However, by letter dated 02.05.2018, the Petitioner Bank rejected the Respondent's bona fide request and refused to give recredit of excess interest charged. A copy of the letter dated 02.05.2018 by the Respondent Company to the Petitioner Bank is hereto annexed as Exhibit -S. A copy of the letter dated 02.05.2018 by the Petitioner Bank to the Respondent Company is annexed as Exhibit - T.

4.39. The Respondent Company made a further representation by letter dated 23.10.2018 to the Head office of the Petitioner Bank seeking reversal and recredit of excessive interest charged for the month of August and September, 2018 for an amount of Rs.16,93,904/-. The Respondents pleaded that excessive rates of interest were in fact due to the Bank's delay in review and renewal of facilities and that the Respondent Company ought not to be punished for it. However, this bona fide request was expressly, wrongfully and illegally rejected by the Petitioner Bank's Head Office. A copy of the letter dated 23.10.2018 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - U. A copy of the letter dated 09.11.2018 by the Petitioner Bank to the Respondent Company is annexed as Exhibit - V.

4.40. The Respondent Company made a parallel representation by letter dated 02.11.2018 to the Petitioner Bank seeking reversal and recredit of excess interest being charged for an amount of Rs. 27,06,433/-. The Respondents pleaded that excessive rates of interest during slackness in business cycle were very detrimental to the Respondent Company's business. However, this bona fide request was expressly, wrongfully and illegally rejected by the Petitioner Bank by its letter dated 30.11.2018. A copy of the letter dated 02.11.2018 by the Respondent Company to the Petitioner Bank is hereto annexed as Exhibit - W. A copy of the letter dated 30.11.2018 by the Petitioner Bank to the Respondent Company is annexed as Exhibit - X.

4.41. The Respondent Company made a parallel representation by letter dated 03.11.2018 to the Head office of the Petitioner Bank seeking 23 reversal and recredit of excess interest being charged for an amount of Rs. 27,06,433/-. All along, the Respondent pleaded that excessive rates of interest during slackness in business cycle were very detrimental to the Respondent Company's business. However, this bona fide request was expressly, wrongfully and illegally rejected by the Petitioner Bank. A copy of the letter dated 03.11.2018 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - Y.

4.42. Alarmed, and greatly aggrieved by the repeated rejections, the Respondent by its letter dated 27.11.2018 once again pleaded with the Head Office of the Petitioner Bank to release of the Respondent Company's mortgaged properties at Flat No. 202 in Kukreja Palace, Ghatkopar and Flat No.705 in Satra Park Borivili West to enable the Respondent Company to sell the assets and repay a part of the loans for reduction of the liability and interest. Sadly however, by letter dated 31.12.2018 even this plea was summarily dismissed by the Head Office of the Petitioner Bank. A copy of the letter dated 27.11.2018 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - Z. A copy of the letter dated 31.12.2018 by the Petitioner Bank to the Respondent Company is annexed as Exhibit - AA.

4.43. The Respondent Company made another fervent representation by letter dated 12.01.2019 to the Petitioner Bank seeking concessional rate of interest to 11%. The Respondent's letter also sought a recredit/refund of excess interest charged to the tune of Rs. 40,01,742/-. There was no response to this plea from the Petitioner Bank. A copy of the letter dated 12.01.2019 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - BB. Then the Respondent by letter dated 12.01.2019 pleaded with the Branch Office of the Petitioner Bank to release of the Respondent Company's mortgaged properties at Kukreja 202 and Satra Park 705 in Borivali to enable the Respondent Company to sell the assets and repay a part of the loans for reduction of the liability and interest. Sadly however, even this plea was also summarily dismissed by the Head Office of the Petitioner Bank. A copy of the letter dated 12.01.2019 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - CC.

4.44. The Respondent Company made a further representation by letter dated 19.01.2019 to the Head Office of the Petitioner Bank pleading for refund and recredit of excessive Interest charged in Cash Credit Accounts for the months of Aug to Dec 2018 to the tune of Rs.39,53,208/-. The Respondent also pleaded to the Petitioner Bank for expeditious renewal of the Cash Credit application and for concessional interest rate in CC facility. However, the Petitioner Bank despite being fully aware of the incipient stress being faced by the Respondent Company did not take any action on this bona fide request. A copy of the letter dated 19.01.2019 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - DD.

4.45. Being in difficult financial situation and the Respondents by a very detailed letter dated 12.02.2019 sought bona fide and much deserved relief from the Petitioner Bank one multiple fronts inter alia, a recredit of excess interest amounting to Rs.48,89,849/- as well as release of the Respondent Company's mortgaged properties at Flat No. 202 in Kukreja Palace, Ghatkopar and Flat No. 705 in Satra Park Borivili West to enable the Respondent Company to sell the assets and reduce the loan amounts by up to Rs. 4.15 crores. However, by one-line letter dated 27.02.2019, without any thought or application of mind the Respondent Company's bona fide plea was again summarily dismissed by the Head Office of the Petitioner Bank. A copy of the letter dated 12.02.2019 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - EE. The Petitioner Bank issued a further one-line letter of rejection dated 20.03.2019. The arrogant and stubborn attitude of the Petitioner Bank is reflected from its summary refusal and stubborn refusal to even give a fair consideration to the repetitive requests of the Respondents. A copy of the one-line letter dated 27.02.2019 and 20.03.2019 by the Petitioner Bank to the Respondent Company summarily rejecting the Respondents' request are annexed as Exhibit - FF and Exhibit - GG.

4.46. The Respondent Company once again pleaded with the Head Office of the Petitioner Bank by letter dated 13.04.2019 to the pleading for refund and recredit of excessive Interest charged in Cash Credit Accounts for the months of Aug to Dec 2018 to the in tune of Rs.39,53,208/-. The

Respondent also pleaded with the Petitioner Bank for the renewal of the Cash Credit facility and for concessional interest rate in CC facility. However, the Petitioner Bank despite being fully aware of the incipient stress being faced by the Respondent Company summarily dismissed the bona fide request by letter dated 22.04.2019 arrogantly stating that no further correspondence would be entertained by the Petitioner Bank. A copy of the letter dated 13.04.2019 by the Respondent Company to the Petitioner Bank is annexed as Exhibit HH. A copy of the letter dated 22.04.2019 by the Petitioner Bank to the Respondent Company is annexed as Exhibit - II.

4.47. Suffering a very difficult financial position, the Respondent Company once again fervently pleaded with the Head Office of the Petitioner Bank by letter dated 25.04.2019 pleading for refund and recredit of excessive Interest charged in Cash Credit Accounts for the months of Aug to Dec 2018 to the tune of Rs.39,53,208/-.The Respondent once again pleaded to the Petitioner Bank for the renewal of the Cash Credit facility and for concessional interest rate in CC facility. However, the Petitioner Bank despite being fully aware of the incipient stress being faced by the Respondent Company summarily dismissed the bona fide request which would have relieved a part of the Respondent Company's stress, refused to respond to the Respondents bona fide and genuine request. A copy of the letter dated 25.04.2019 by the Respondent Company to the Petitioner Bank is annexed as Exhibit TJ. A copy of the letter dated

21.05.2019 by the Petitioner Bank to the Respondent Company is annexed as Exhibit - KK.

4.48. The Respondent Company by letter dated 19.11.2019 once again fervently pleaded with the Petitioner Bank for adjusting the Company's Deposit against the Letter of Credit facility. The same letter also sought permission for sale of mortgaged properties and for utilization of the proceeds to reduce the cash credit facility and to reduce the crippling interest burden. Besides, the Respondent Company also requested the Bank to accept assignment of a sealed decree of this Court in favour of the Respondent Company worth Rs. 24.44 crores for reduction of the cash credit facility. Finally, the Respondent once again sought a recredit of the wrongfully charged excess interest and renewal of the cash credit facilities. However, in line with its earlier non-cooperative, may negligent and mala fide conduct the Petitioner Bank once again ignored the Respondents' fervent pleas for relief. A copy of the letter dated 19.11.2019 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - LL.

4.49. The Respondent Company has been facing difficulties inter alia due to a slowdown in the construction sector. However, the Respondents always made a full disclosure of the difficulties faced by its business to the Bank. By letter dated 25.11.2019, the Respondent Company detailed the delayed recoveries / bad debts as well as the legal actions against its debtors taken in respect of each of the outstanding recoveries. A particular mention must be made in respect of the largest outstanding of Rs. 9. 75 crores and Interest @ 30% totaling to Rs. 24.51 crores with further interest from Shree Ram Urban Infrastructure Ltd. where the Respondent Company secured a decree in its favor from the Bombay High Court. In addition, the Respondent once again sought the cooperation of the Petitioner Bank to tide over its financial difficulties. However, there was no response to this letter by the Petitioner Bank. A copy of the Respondent's letter to the Petitioner Bank dated 25.11.2019 is annexed as Exhibit - MM.

4.50. Being fed up with the attitude of the Respondent Company made a formal application for restructuring of the company loans with the Petitioner Bank by letter dated 29.11.2019. At this time, the Respondents were not aware about the MSME Notification. However, the Petitioner Bank ought to have treated the Respondent's request in terms of an application under the MSME Notification especially since this request was made prior to the Respondent Company's loan accounts becoming NPA. However, the Petitioner Bank deliberately and wilfully neglected its mandatory duty to constitute a stressed MSME Committee, and to place the Company's loan accounts before such Committee for relief and rehabilitation in terms of the Notification when the Respondent Company itself had explained the incipient stress faced and had sought relief and rehabilitation. A copy of the letter dated 29.11.2019 by the Respondent Company to the Petitioner Bank seeking restructuring of loan accounts is hereto annexed as Exhibit - NN. A copy of the letter dated 21.12.2019 by the Petitioner Bank to the Respondent

Company is hereto annexed as Exhibit - 00. Even after summary rejection of the aforesaid request the Respondent Company made another plea by letter dated 05.12.2019 for refund and recredit of excess interest charged by the Petitioner Bank to the tune of Rs.4,00,753/- for the month of November, 2019. However, as many of the earlier letters, this letter of request by the Petitioner Bank was also wilfully and deliberately ignored and set aside. A copy of the letter dated 05.12.2019 by the Respondent Company to the Petitioner Bank is annexed as Exhibit - PP.

4.51. Even after summary rejection of the aforesaid request the Respondent Company made another plea by letter dated 04.01.2020 for refund and recredit of excess interest charged by the Petitioner Bank to the tune of Rs.6,93,013/- for the month of December , 2019. The Respondent's letter dated 04.01.2020 suffered the same fate of previous correspondence. A copy of the letter dated 04.01.2020 by the Respondent Company to the Petitioner Bank is hereto annexed as Exhibit - 00. A copy of the letter dated 27.01.2020 by the Petitioner Bank to the Respondent Company is annexed as Exhibit - RR.

4.52. All the above instances of correspondent exchanged between the Respondents and the Petitioner Bank highlights the repetitive requests made by the Respondents for nursing and support as an MSME that was facing incipient stress. The Bank despite being fully aware of the difficult being statutory bound to provide the benefits of the MSME Notification, the Bank did not even care to inform the Respondents of the Notification. At this point of time, the business of the Respondent Company though facing severe incipient stress, was still a standard loan asset and the business could have been nursed, revived, and rehabilitated if only the Petitioner Bank had performed its statutory duty of constitution of stressed MSME Committee and placed the Respondent Company loan accounts for rehabilitation in terms of the MSME Notification. The Pandemic hit the entire world, and more particularly badly hit MSME Companies in India. During the Pandemic, the business of the Respondent Company was completely stalled, sales grind to a halt in view of stalled construction projects and worse, the Respondent Company suffered substantial bad debts. At this time, the Government of India through the Reserve Bank of India came up with several Circulars/Notifications to protect the business of MSMEs from financial collapse in view of the catastrophic effect of the nationwide lockdown.

4.53. The Government of India during this period came out with a slew of measures to protect the MSMEs and to prevent MSME Loan Accounts from being declared as NPA. A Copy of RBI COVID-19 Notification dated 06.08.2020 is enclosed as Exhibit - SS. These Notifications were in addition to the MSME Notification dated 29.05.2015 which provided for the constitution of stressed MSME Committees and relief and rehabilitation as mentioned above. However, far from providing any kind of relief, when the entire nation was under a lockdown during the Delta wave of the COVID19 pandemic, the Petitioner Bank by letter dated

12.04.2021 declared the Respondent Company's loan accounts as NPA as on 31.03.2021. A copy of the Petitioner Bank letter dated 12.04.2021 (issued at the height of the COVID-19 pandemic) declaring the Respondent Company as NPA is annexed and marked as Exhibit - TT.

4.54. After having received the aforesaid letter, the Respondents (while the nation continued to be under national lockdown), submitted another detailed representation by way of letter of request for restructuring of loan account dated 10.05.2021. This letter inter alia included yet another RBI Notification dated 05.5.2021 where the RBI permitted the Banks to grant deserving MSME borrowers a two-year moratorium for the payment of interest. It must be emphasized here that despite the Respondents constantly communicating with the Petitioner Bank about the incipient stress, and pleading for life support, the Petitioner Bank never extended any kind of assistance. In fact, despite the long association the Bank was bent on causing the collapse of the upon extracting onerous interest as detailed above. A copy the Respondent's detailed letter dated 10.05.2021 to the Petitioner Bank seeking restructuring is annexed and marked as Exhibit - UU.

4.55. The Petitioner Bank however, did not provide any kind of reply. The tortious, illegal and mala fide actions of the Bank caused a massive loss to the tune of Rs.99,69,86,499/-. This loss far exceeded the claim of the Petitioner Bank. A working calculation of the loss suffered by the Respondent Company is annexed and marked as Exhibit - VY.After declaration of the Respondent's Company as NPA, the Petitioner Bank arranged to issue Advocate's Notice dated 05.07.2021 demanding a sum of Rs. 19,35,88,594.83 in respect of purported outstanding loans. The Respondents refuted and rejected the purported demand by their letter in reply dated 20.07.2021. A copy the Advocates Notice dated 05.07.2021 is annexed and marked as Exhibit - WW. A copy the Respondent's letter dated 20.07.2021 is annexed and marked as Exhibit - XX.

4.56. The Petitioner Bank issued Notice of dispute dated 06.08.2021 for initiation of arbitration proceedings under the MSCS Act, 2006. Shortly after being served the said Notice the Respondent Company filed their objection questioning the very jurisdiction of Arbitrator. The Bank filed Arbitration Case No. ARB/ACB/VNL/2055 of 2021 in or about July, 2021 before the Respondent No. 3 · Arbitrator claiming an amount of Rs.50,47,82,172.15 along with interest of Rs.2,41,68,990/- totally amounting to Rs.52,89,51,162.15 as on 30.06.2021. A copy of the Claim of the Petitioner Bank filed in the arbitral proceeding under the MSCS Act is marked and annexed as Exhibit - YY. A copy of the objection filed on 29.10.2021 by the Respondents questioning the jurisdiction of Arbitrator to conduct an enquiry is produced as Exhibit - ZZ. A copy of Petitioner Bank's reply dated 04.12.2021 to the Respondent's objection (Bank's rejoinder) is produced as Exhibit - AAA. A copy of the Written Statement filed by the Respondent's to the

Statement of Claim filed by the Petitioner Bank is annexed and marked as Exhibit - BBB.

4.57. The Respondents submit that Section 84 of the MSCS Act, 2006 could have had no application since the Respondents were not members of the Petitioner Bank within the meaning of the Multi state Co-operative Societies Act. Again, even assuming for mere argument's sake without conceding in the least, that the Respondents are members of the Bank and therefore Section 84 is attracted and that the dispute between them and the Bank is liable to be compulsorily referred to arbitration, the Petitioner Bank having taken recourse to the mechanism provided under the MSCS Act, was estopped from simultaneously invoking the SARFAESI Act without abandoning the arbitration proceedings. The reason is that a dispute between two parties having been referred to a tribunal/court of competent jurisdiction, and such a tribunal/Court being in sees in of the controversy no other court can take cognizance of the matter. However, in the case of the Petitioner Bank as detailed herein after, the Bank has even invoked IBC 2016 by way of a Section 95 Petition despite the pendency of the execution proceedings under MSCS Act and despite enforcing security interest under the SARAFESI Act. However, all these actions were illegal and void ab-initio being in violation of the mandatory provisions of the MSME Notification read along with the MSMED Act, 2006 which provided for mandatory measures of relief and rehabilitation.

4.58. Article 372 of the constitution declares that common law is the law of the land and the doctrine of estoppel, may, cause of estoppel, res judicata, being the very foundation on which common law is built, election of a forum where multiple forums are available under law, forbids a party who has so elected his forum from initiating action in yet another forum simultaneously, for the enforcement of the very same right between the same opponent.

4.59. The Respondent Company and its sister concerns have been banking with the Petitioner Bank for the last over 33 years, and the Respondents and its sister concerns have paid an aggregate sum of Rs.300 crores by way of interest, is under no obligation to make any payment to the Petitioner Bank because the loss and injury which Respondent Company suffered on account of the gross breach of contract, culpable negligence, malicious and tortious action, far exceeds the claim of the Bank as against them.

4.60. There is no forum, other than the Civil Court, which alone is a Court of record of plenary jurisdiction which could try the case of the Respondents as against the Petitioner Bank and grant a declaration that no amount is due by to the Petitioner Bank, and that on the contrary, the Respondent Company is liable to be compensated for the loss and injury which Respondent has suffered. Hence a Commercial Suit has already been filed against the Petitioner Bank as explained herein above.

4.61. Here it needs to be stated that the learned Sole Arbitrator, who conducted the arbitration proceedings leading up to the illegal, may void arbitration award had retired as the Presiding Officer of DRT-III, Mumbai. The said Arbitrator is a judicial officer who is respected for his integrity and good conduct. The Respondent Company holds him in great respect and does not intend to cast any personal aspersion upon him as a person. However, the very fact that an arbitrator appointed under Section 84, for all practical purpose, is only that of a highly placed officer of the Bank, is inconsistent with the judicial function which the statute casts upon him. For the reasons explained herein before, he was unable to act independently and even if he did it never appeared so from his conduct in rushing through the arbitration process and passing awards in favour of the Petitioner Bank. Thus, the Arbitrator is clearly a Coram non judice. Section 84 (4) speaks about the manner in which an arbitrator is to be appointed. The power of appointment of the arbitrator is vested in the Central Registrar. It is a fundamental principle of law that it is not necessary for the legislature, in every enactment it enacts, to state that the principles of natural justice must to be observed. Such an obligation has to be read into the statute. It was so held by the House of Lord's in Ridge v. Baldwin, so too by the Supreme Court in a large number of judgments following Bridge v. Baldwin such as Maneka Gandhi, Swadeshi Cotton Mills, M.S Gill, Kraipak, to name a few.

4.62. The Central Registrar of Cooperative Societies appointed an arbitrator entirely behind the Respondent's back. There is no such practice of keeping the borrower, a party to the dispute, informed, much less affording him an opportunity to be heard. Thus, the appointment of the Arbitrator who passed the Arbitration Award that forms the basis of this claim is liable to be declared as one rendered void ab initio, being violative of the principles of natural justice. In fact, the said Arbitrator could not have in law, decided the objection as to his own jurisdiction, for he is not a court of record of plenary jurisdiction, but is only a tribunal. It is · a fundamental principle of law that no tribunal can adjudicate upon its own jurisdiction, may, confer jurisdiction upon it by an erroneous decision as to its own jurisdiction. It was so held by the House of Lord's in Anisminic v Foreign Compensation commission, so too in A.R Antulays case. In Antulay's case, the Supreme Court even took the view that even the Supreme Court, may, even a constitution bench of the Supreme Court cannot confer jurisdiction upon it where law has provided none. The Petitioner Bank did not even furnish the Respondent Company with a copy of the notification issued by the Central Registrar appointing the Arbitrator. Hence the validity of the same could not be questioned except by way of a suit or by a petition under Article 226 as the instant one. Because unlike the Income Tax Act, there is no provision for a reference to the High Court for a determination as to the validity of any instrument under the MSCS Act.

58.However, even after initiation of arbitration proceedings, the

Petitioner Bank invoked Sections 13(2) and 13(4) of the SARFAESI Act. The copy of the Petitioner Bank notices dated 11.08.2021 and 20.10.2021 are marked and annexed as Exhibit - CCC and Exhibit - DDD respectively. On 24.03.2022 the Petitioner Bank then filed SARFAESI Case No. 100567 of 2022 before the Chief Metropolitan Magistrate Court in respect of the Respondents' properties and obtained order dated 05.11.2022 under Section 14 of the SARFAESI Act, 2002 in respect of the properties located at Mulund West and Ghatkopar East. A copy of the Magistrate Court order dated 05.11.2022 passed in SARFAESI Case No. 100567 of 2022 is annexed and marked as Exhibit - EEE.

4.63. Under these circumstances, the Respondents instituted Suit (St). No. 11480 of 2021 before the Bombay City Civil Court for various declaratory, equitable and other common law remedies since the Respondent No.5 bank which after invoking Section 84 of the Multi State Cooperative Societies Act of 2002 and upon appointing Respondent No. 7. ie., Hon'ble Shri. V.N. Lothey Patil as the Sole Arbitrator by the Central Registrar, ie., Respondent No.8, under the said Act, invoked Section 17 of the SARFAESI Act without abandoning the proceedings initiated under Section 84 of the 33 Multi State Cooperative Societies Act. The said action of the Bank is one rendered void ab initio, for more than one reason. The Respondents are also seeking declaration that the Appellant as an MSME Sector Unit and is squarely covered under the provisions of the MSME Act, and that loss and injury which the Appellant has suffered on account of the gross breach of contract, culpable negligence and tortious and malicious action far exceeds the claim of the Bank as against the Appellants and that the classification of the Appellants account as NPA is illegal and void. The Respondent craves leave to refer and rely upon the Suit. However, by order dated 06.09.2022 the said Suit was disposed by the Bombay City Civil Court on the question of bar of jurisdiction under Article 34 of the SARFAESI Act, 2002. The Respondents have filed Appeal (L) No.30525 of 2022 before this Court and the matter is pending. A copy of the order dated 06.09.2022 passed by the Bombay City Civil Court dated in Suit (St). No. 11480 of 2021 is annexed and marked as Exhibit - FFF.

4.64. As mentioned above, the Respondent Company also instituted Writ Petition No. 4620/2022 before this Hon'ble Court under Article 226 of the Constitution for writ of mandamus against the Petitioner Bank and for other declaratory reliefs under the MSME Notification read along with the provisions of the MSMED Act, 2006. The said Petition was clubbed along with 18 other Writ Petitions on the question of law that the application of the measures stated under the MSME Notification were mandatory, it was the duty of the Petitioner Bank to constitute a stressed MSME Committee and to place the loan accounts of the Respondents before such Committee for relief and rehabilitation in terms of the Notification.

4.65. Meanwhile the decision of the one-sided Arbitration was a fait accompli since the Respondent No. 7 Arbitrator rushed through the entire process. The multiple objections raised on behalf the Respondents were brushed aside. The Arbitrator refused to consider the binding nature of the MSME Notification and even refused to temporarily suspend the proceedings pending a decision on the aforesaid question of law by this Court. The result of such a one-sided arbitration process was a fait accompli. The Arbitrator passed Arbitration Award dated 05.11.2022 ordering and directing the Respondents to make payment of a sum of Rs.52,89,51,162.15 along with interest amount. A copy of the Arbitration award dated 05.11.2022 received by the Respondents on 25.11.2022 is annexed and marked as Exhibit - GGG.

4.66. The Respondents submit that in the meanwhile, Writ Petition WP/4620/2022 and clubbed Petitions being heard and reserved for orders on 09.08.2023. When this Hon'ble Court has reserved the Respondents' case sine die for orders, the Petitioner Bank was dutybound to maintain status quo. Any precipitatory action on their part would amount to contempt of court. However, they by resort to threat and deception made the Respondent allow the Bank to take possession of the residential flats of the Respondents as also the office premises, and to alienate the same. The Respondents were coerced into jointly file a consent term. The Bank could thus unjustly, may, in gross contempt of this Hon'ble Court, recover Rs. 10 crores from the Respondents. A copy of order dated 11.01.2024 passed by the High

Court in WP/4620/2022 is annexed as stated above. A copy of the consent terms executed between the Respondents and the Petitioner Bank is annexed and marked as Exhibit - HHH.

4.67. Thereafter, this Court by common order dated 11.01.2024 passed in Writ Petition No. 4620/2022 and others ruled that the application of the MSME Notification was not mandatory and could only be brought into force specifically by the MSME borrower's application supported by Affidavit and that the lender was under no obligation to identify incipient stress nor constitute a stressed MSME committee as contemplated under the MSME Notification. Clearly, this judgment as per in curium the law since it reduced the MSME Notification to a meaningless piece of paper. In fact, the judgment even ignored the fact that most Petitioners including these Respondents had intimated to their respective lenders about incipient stress being faced and the Banks refused to give effect to the Notification, may did not even inform the Petitioners about it so as to enable them to apply for reliefs in the prescribed format.

4.68. The Respondents, aggrieved by the aforesaid Judgement dated 11.01.2024 filed SLP (D) 19108/2024 before the Supreme Court of India. The said SLP was clubbed along with other similar SLPs which had challenged the aforesaid decision of this Court. Furthermore, the Respondents also filed Review Petition No. 4758 of 2024 before this Court seeking a review of the aforesaid order dated 11.01.2024. By judgement dated 01.08.2024 in SLP (D) 19108/2024 [M/s. A.

Navinchandra Steels Pvt. Ltd. & Ors. V. Union of India & Ors], the Supreme Court held that the measures under the MSME Notification were mandatory and that the Petitioner Bank ought to have extended the benefits of the MSME Notification. A copy of the judgement dated 01.08.2024 passed by the Supreme Court in SLP (D) 19108/2024 filed by the Respondent against the Petitioner Bank.

4.69. As mentioned above, despite the authoritative judgement of the Supreme Court, and even despite the pendency of the Respondent petition before challenging the arbitration award, the Petitioner Bank appointed a Sale Officer who issued Notices dated 28.04.2025 to the Bank of Baroda, the HDFC Bank and to NSDL leading to a debit freeze on all personal bank accounts and demat accounts of the Respondents. Copies of the Notices issued by the Sale Officer of the Petitioner Bank have been annexed as stated above.The Respondent submits that the Petitioner Bank has also filed Company Petition No. No. 1104 of 2025 and Company Petition no. 1111 of 2025 under Section 95 of the IBC 2016 before this Tribunal against the Directors of the Respondent Company. The Respondent states that the said proceedings are completely illegal, bad in law. As already explained the said proceedings are based upon an arbitration award issued by an arbitrator who is Coram non judice. Moreover, the Petitioner Bank has already initiated execution proceedings under the MSCS Act, 2006. A copy of the Petitioner Bank's IBC Section 95 Petition No. No. 1104 of 2025 against the Managing Director of the Respondent Company is hereto annexed and marked as Exhibit - III. A copy of the Petitioner Bank's IBC Section 95 Petition No. 1111 of 2025 against the other Director of the Respondent Company is annexed and marked as Exhibit - TTT.

4.70. Thus, the Petitioner Bank firstly destroyed the business of the Respondent Company by refusing to apply the mandatory provisions of the MSME Notification and even given any other form of financial restructuring that the Respondents had been pleading for years. In doing so, the Respondents suffered huge financial losses, damages to reputation, and lost their means of livelihood and income. After destroying the Respondent Company's business, the Petitioner Bank illegally and wrongfully resorted to triple parallel proceedings - under the MSCS Act, 2006, the SARFAESI 2002, and the IBC 2016 to completely liquidate these Respondents. The height of injustice is that Petitioner Bank has not even stopped at wanting these Respondents to be declared bankrupt and insolvent and gone a step further issuing illegal Notices to the Directors of the Respondent Company for declaration as wilful defaulters. A copy of the common Notice dated 02.09.2024 seeking to declare the Respondent Company's Directors as wilful defaulters is annexed and marked as Exhibit - KKK.

4.71. This Tribunal ought not to remain a mute spectator to the wanton abuse of banking laws by the Petitioner Bank. The instant IBC Petition represents the grossest abuse of the law. In fact, the Respondent Company and its Directors have suffered a complete miscarriage of justice at the hands of the Petitioner Bank which stubbornly refused to provide any kind of relief especially mandatory relief under the MSME Notification that would have enabled the business of the Respondents to be rehabilitated and revived. The massive and irreparable damage suffered by the Respondents warrants a summary dismissal of the instant Petition with costs.

4.72. Here it would not be out of place while this Tribunal, the High Courts and Tribunals and even the Supreme Court have routinely declined mandatory reliefs under MSME Notification for financially weak and distressed MSMEs, Courts and Tribunals have displayed extraordinary magnanimity and showered their largesse upon large corporate borrowers. For instance, this Tribunal allowed a Resolution Plan for Anil Ambani's Company for Rs. 455 crores or 0.92% of the amount claimed against a total claim by the financial creditors of Rs. 47,000 crores. The successful resolution applicant who offered Rs. 455 crores is a Company owned by Mr. Mukesh Ambani. A true copy of the order dated 19.12.2023 passed by this Hon'ble Tribunal, in I.A. No. 2429 of 2021 in CP (IB) No. 3025 of 2019 is annexed herewith and annexed as Exhibit - LLL. In another case, this Tribunal allowed an Interim Application filed by Mr. Anil Ambani in IBC Section 95 (personal insolvency) proceedings filed against him. The said application prayed for the replacement of the IRP. This Application was allowed by this Tribunal four years after IRP Report under IBC Section 99 was pending the consideration of this Tribunal. The said Report was set aside by this Tribunal as stale, and a new IRP was appointed with a direction to submit a fresh report. A true copy of the order dated 15.07.2025 passed by the Hon'ble National Company Law Tribunal, Mumbai Bench-I in I.A. No. 1773 of 2024 is annexed as Exhibit - MMM.

4.73. It is well settled that when an Act of Parliament expressly recognizes the common law remedies and/or creates rights and obligations, may, remedies which are not recognized in common law, and the statute, in the instant case. The MSMED Act, 2006 does not provide for a mechanism or forum or tribunal for the enforcement of the rights/remedies, the Civil Court's jurisdiction is not ousted (Dhulabhai And Others vs The State Of Madhya Pradesh, 1968 SCR (3)662).

4.74. The MSMED Act, while providing for rights and protection for the MSME units, did not provide for special forums for the enforcement of the rights and redressal of grievances of MSME borrowers, the Civil Court are thus empowered for the same and the jurisdiction of the Civil Court is not ousted.The Respondent Company avers that the forum created under the Recovery of Debts and Bankruptcy Act, 1993, the SARFAESI Act of 2002, The Insolvency and Bankruptcy Code, 2016, and Sole Arbitrator Appointed U/s. 84 of the Multi State Co-operative Societies Act, 2002 constitute to be no forum in substitution of the Civil Court to decide the inter se dispute between a debtor who has actionable claim, may, rights and remedies against creditors, including Secured Creditors as also statutory authorities. Prior to the promulgation of the Recovery of Debts and Bankruptcy Act, 1993, The Insolvency and Bankruptcy

Code, 2016, and the SARFAESI Act of 2002, the Civil Court adjudicating an insolvency proceeding is invested of the jurisdiction to entertain all pleas, may, was duty bound to conduct an enquiry which could be two sided where a debtor asserts himself to be invested of rights and remedies in law against the creditors including Secured Creditors. Thus, the Respondent maintain that the Civil Court jurisdiction is not barred, where a debtor seeks enforcement of remedies as against a Creditor including a Secured Creditor.

4.75. Further, access to justice, namely where a person, be it an animate one or an inanimate, artificial legal entity is an inalienable fundamental right, may, very birth right and howsoever laudable could be a legislative objective, the said right cannot be taken away, that all legislations by which Tribunals or Forums are created in substitution of the Civil Court is liable to be construed as one invested of the jurisdiction to embark upon an enquiry for which alone it was created in substitution of the Civil Court and it cannot be so construed, may, such Forums and Tribunals are indeed incapable of discharging the functions of the Civil Court in substitution whereof they are created, the Civil Court jurisdiction is not barred, but retained. The business of the Respondent was small, even in terms of the concept of MSME. The Respondent Company is registered under MSME Act. The Petitioner Bank was bound to give relief in terms of the MSME Notification. However, as explained here before, the tortious, illegal and mala fide actions of the Bank caused a massive loss to the tune of Rs.99,69,86,499/-. This loss far exceeded the claim of the Petitioner Bank. Hence as mentioned herein above, the Respondent has filed Commercial Suit No. 33569 of 2025 for damages and various other reliefs as stated above.

4.76. Chapter V of the MSMED Act which is a special, remedial, welfare legislation, overrides all other laws including the SARFAESI Act. Section 24 expressly states so. The Respondent as an MSME creditor has primacy over a secured creditor, even over the claims of the crown/state. The Respondent obtained a decree against its biggest defaulting debtor Shree Ram Urban Infrastructure Ltd. to the tune of Rs. 14.89 crores towards the amount due in respect of the steel supplied to the said Company. However, before the Respondent could execute the decree, Indiabulls Housing Finance Limited ("IndiaBulls") as a secured creditor invoked SARFAESI and Action Barter Pvt. Ltd., an operational creditor, invoked the Companies Act 1956 for winding up of Shree Ram Urban Infrastructure Ltd. Indiabulls, a purported secured creditor, by fraudulent means, keeping the Respondents entirely in darkness, obtained order dated 07.02.2019 in Company Application 420/2018 in Official Liquidator Report 16 of 2018 from this Hon'ble Court in Company Petition CP/1066/2015 allowing Indiabulls to take over physical possession of the properties of Shree Ram Infrastructure from the Official Liquidator of this Court. Had this Hon'ble Court exercising jurisdiction under the Companies Act been aware that the Respondent, as an MSME, has primacy over the properties of Shree Ram Infrastructure, this Hon'ble Court would not have allowed Indiabulls to take possession of the Properties of Shree Ram under Section 13 and 14 of the SARFAESI Act. Indiabulls which took possession by playing fraud on this Court, thereafter, sold the property by conduct of a sham auction to Honest Shelters Pvt. Ltd., a shell company with a share capital of merely Rs. 1 lakh and zero revenue or transactions. In fact, Indiabulls lend money to private entities Ashden Township and Ashden Developers which in turn lent a huge sum of money to Honest Shelters. Honest Shelters in turn, using the money lend by Indiabulls purchased Palaise Royale, the crown jewel of Shree Ram Urban Infrastructure Limited, a 75-storey tower through an auction which is ex facie a fraud, money laundering and an offense under the PMLA Act. A copy of the chart detailing the circuitous manner in which Indiabulls allowed its shell company to purchase the assets of Shree Ram Infrastructure is produced as Exhibit- NNN \

4.77. The Respondent has been advised to institute a separate suit because the fraudulent manner in which Indiabulls, a secured creditor, could defeat the rights of the Respondent, an MSME who has primacy over the properties of Shree Ram by instituting an independent suit. The Petitioner Bank was fully aware of this difficulty, but as mentioned above adopted a tortious, mala fide and hostile attitude towards the Respondent Company and its Directors even after such a long Banking relationship. The Petitioner craves leave to file an additional Affidavit providing any further information/particulars as may be necessary and to amend the instant Affidavit if deemed necessary, and permitted by this Hon'ble Tribunal.

4.78. Under the circumstances, and in view of the grounds detailed above the instant Petition filed by the Petitioner Bank being a serious abuse of the process of the IBC 2016 ought to be dismissed with heavy costs.

5. REJOINDER

5.1. The Affidavit in Rejoinder dated 27.03.2026 is filed by Shubhangi P Matale, who is the Authorised officer of the Applicant.

5.2. It is stated that Respondent had availed different loan facilities i.e. cash credit facility of Rs. 35,00,00,000/- and Letter of credit facility of Rs. 15,00,00,000/-vide sanction date 01.11.2019. Due to continuous default, the said accounts were classified as Non-Performing Assets (NPA) on 13.02.2020.

5.3. the Petitioner also initiated arbitration proceeding u/s 84 and 85 of Multi State Co-operative Societies (MSCS) Act, before Ld. Sole Arbitrator, who was duly appointed by the Ld. Central Registrar, New Delhi, for adjudication of its dues. The Respondent was given fullest opportunity to defend itself by filing replies/Written Statement and also afford the oral hearing, to justify the same. After detailed hearing, the Ld. Arbitrator was pleased to finally adjudicate the claim of the Petitioner vide Award dated 05.11.2022.

5.4. Petition u/s 7 of IBC Code, is the punitive action against the Respondent Company, who failed to pay the amount more than the threshold limit of Rs.1 Crores or above. The proceeding under IBC is not the recovery proceeding, as being held by the various Ld. NCLTs / NCLAT and Hon'ble Supreme Court of India from time to time.

5.5. It is an admitted position that the Petitioner in order to adjudicate its dues could file a Dispute Application before the Ld. Arbitrator appointed by Ld. Central Registrar, New Delhi under the provision of MSCS Act, which has no connection with the present proceedings under IBC. Similarly, the SARFAESI action under the provision of SARFAESI Act is for realization of its security, which also has no connection with the present Proceeding.

5.6. It is also an admitted position that the Ld. Arbitrator under the provision of the MSCS Act was pleased to adjudicate the dispute of the Petitioner after giving fullest opportunity to the Respondent and its guarantors/mortgagors and further pleased to pass an Award dated 05.11.2022. The finding of the Ld. Arbitrator under the said Award dated 05.11.2022 is binding upon the Respondent Company. The Respondent Company filed an Arbitration Petition before the Hon'ble High Court Bombay u/s 34 of Arbitration and Conciliation Act 1996, challenging the said Award dated 05.11.2022. It is pertinent to note that the Hon'ble High Court vide its order dated 12.02.2026 was pleased to dismiss the said Arbitration Petition. The copy of the said Order dated 12.02.2026 annexed as Exhibit B of the Rejoinder

5.7. The Preliminary objection of the Respondent is that the instant petition is time barred as the date of default / NPA is 13.02.2020. It is pertinent to note that said NPA date was relevant for the purpose of the filing of the recovery proceedings by the Petitioner under the provision of MSCS

Act, before the Ld. Arbitrator. Once the recovery Proceeding has been filed, which culminates into an Award, then and in that circumstances, the date of the NPA becomes an academic date. Once the Award is passed, the same should be treated as decree against the Respondent and the life of the decree is 12 years, hence filing of the present section 7 petition of IBC, on the basis of the default in paying the said decretal amount, is very well maintainable. The Respondent cannot take alleged shelter of the non-service of the further affidavit, to claim dismissal of the present Company Petition, since the Respondent was all along appearing before the Ld. Arbitrator and was aware of passing of the said Award. The further affidavit is to state that the present Company petition is filed, on the ground of default committed by the Respondent, in not paying the said decretal amount

5.8. Petitioner has issued a demand notice dated 18.06.2025 inter-alia demanded from Corporate Debtor/Respondent, an outstanding amount of a sum of Rs. 70,71,96,999.99/-calculated as on 31.03.2025 along with further interest fi.om 01.04.2025 (In terms of the Award dated 05.11.2022), within 10 days (i.e. on or before 28.06.2025) from the date of receipt of the said notice by Corporate Debtor (CD), which the CD has admittedly failed to pay, resulting into default committed by the CD. Therefore, the date of default would become 28.06.2025. The Petitioner is relying upon the said notice dated 18.06.2025 for claiming default. Therefore, the objections raised by the CD w.r.t. to alleged date of default dated 13.02.2020 is now becomes infructuous, baseless and void.

5.9. Furthermore, the Respondent has raised an objection with respect to the jurisdiction and appointment of Arbitrator is baseless and are denied in toto, as the Arbitrator has been appointed under section 84 of Multi State Co-Operative Society Act, (MSCS Act) by the Ld. Central Registrar, New Delhi. The said Award dated 05.11.2022, has been challenged by the CD/Respondent before Hon'ble High Court in Arbitration Petition No. 742 of 2023, which was dismissed on 12.02.2026 by Hon'ble High Court, Bombay

5.10. The Respondent, by way of its Reply, has sought to take shelter under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006, which is wholly misconceived and not maintainable. It is settled position of law that the proceedings under Section 7 is maintainable on the basis of the default committed by the CD/Respondent. In the present case the CD/Respondent has admittedly committed default in paying the decretal amount to the Petitioner

5.11. In the present case, both the debt and default stand clearly established. Hence, the reliance on MSME provisions, along with other grounds raised by the Respondent, is merely dilatory and intended to mislead this Hon'ble Tribunal. It is further submitted that the issue pertaining to MSME has already been is duly considered and dealt with by the High Court of Bombay in its Order dated 12.02.2026. The CD therefore again and again cannot be re-agitated the same in the present proceedings.

5.12. It is pertinent to note that the Hon'ble High Court and the Hon'ble Supreme Court of India were pleased to hold that once the account of any Borrower (Defaulter) become NPA and the creditor has initiated any proceedings such as SARFAESI action or any recovery action, then and in that case the said Borrower (Defaulter) to file an appropriate application in case challenging the. action of the creditor. It was also held that Borrower (Defaulter) upon initially defaulted, the said Borrower (Defaulter) should approach the creditor for resolution of the said defaulting account with the scheme for revival, if the said Borrower (Defaulter) is desirous of the taking advantage under the MSME Act. Once the account become declared as NPA and the creditor initiate the said SARFAESI and recovery action, then the said borrower (Defaulter) cannot take shelter under MSME Act to derail the said SARFAESI and recovery action.

5.13. At the admission stage, the Adjudicating Authority is required to examine only the existence of financial debt and default, as clarified by the Hon'ble Supreme Court in Innoventive Industries Ltd. v. ICICI Bank. Therefore, the reliance on MSME provisions is wholly untenable and liable to be rejected.

5.14. It is pertinent to note that the Petitioner Bank has filed the instant petition for initiation of Corporate Insolvency Resolution Process; however, on a perusal of the Reply filed by the Respondent, it is evident that the Respondent is attempting to mischaracterize the present proceedings as a recovery action. 'Such a stand is wholly misconceived and contrary to the settled position of law, and the Respondent, having taken inconsistent and contradictory pleas, ought not to be heard in light of the well settled maxim “allegans contraria non est audiendus”.

5.15. Petitioner for recovery of its bonafide dues filed Dispute Application under the provision of MSCS Act, which culminated into the Award dated 05.11.2022, which was upheld by the Hon'ble High Court vide its order dated 12.02.2026. I say that the Petitioner for realization of its security has initiated the SARFAESI action under the provision of the SARFAESI Act. The default committed by the CD/Respondent in repaying the said Awarded (Decretal) amount, the Applicant filed the present Company petition for initiation of CIRP process. Action of the Petitioner is independent to other action, initiated under the special act, which works into the different scope of law. Hence the contention of CD/Respondent that Petitioner cannot initiate the above action at one time, is wholly misconceived and not maintainable.

6. <u>WRITTEN SUBMISSION (Applicant)</u>

6.1. The Corporate Debtor has relied upon the judgement of Dena Bank (Now Bank of Baroda) V/s. C. Shivkumar Reddy and Another (2021) 10 SCC 330.

6.2. The Applicant has relied upon the same argument as recorded in its Petition and Rejoinder and for the sake of brevity we are not recording the same herein.

7. <u>WRITTEN SUBMISSION(CD)</u>

7.1. The Corporate Debtor has argued and relied on the following objections-;

a. Petition is ex facie barred by limitation:

b. Arbitration Award is Void ab initio and is passed without jurisdiction.

c. Supreme Court has upheld Respondent's Statutory rights under MSME Notifications:

d. Bank's conduct shows gross breach of statutory duty & malafides

e. Doctrine of Election of Remedies – Parallel Proceedings Bar IBC Invocation:

f. Debt is seriously disputed and Respondent's claim exceeds Bank's claim:

g. This Hon'ble Tribunal lacks jurisdiction over two sided contractual disputes:

h. MSME disputes are subject to civil court jurisdiction

7.2. The Corporate Debtor has relied on the following judgements;-

I. Dhulabhai And Others vs The State Of Madhya Pradesh, 1968SCR (3)662.

II. Pro Knits v. Canara Bank (01.08.2024),

III. Shri Shri Samarth Construction v. NKGSB Bank (28.07.2025)

IV. Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.

8. PROCEEDING BEFORE THIS ADJUDICATING AUTHORITY

8.1. It is pertinent to note that following the completion of pleadings on 03.06.2026, the matter was listed for final arguments and subsequently adjourned to 02.07.2026. On the said date, the Applicant concluded its oral submissions, and the Respondent was heard in part for 45 minutes before seeking an adjournment, whereupon the matter was deferred to 07.07.2026. Owing to paucity of time on 07.07.2026 and a subsequent accommodation granted on 15.07.2026 due to the non-availability of the Respondent's Senior Counsel, the hearing resumed on 21.07.2026. On this date, the Learned Counsel for the Respondent was allotted and heard for a dedicated time slot of one hour (from 02:45 PM to 03:45 PM). Upon the expiration of the allotted time, the Respondent sought a further one day additional time to conclude its arguments. However, observing that ample and sufficient opportunity had already been afforded to the Respondent across multiple hearings, this Tribunal declined the request for additional time, closed the oral arguments, and reserved the main Petition for orders.

9. ANALYSIS AND FINDINGS

9.1. We have heard both the sides and have perused the pleadings as were produced before us.

9.2. On perusal of the documents including the application, it is observed that initially cash credit facility account Number CC/513 for Rs. 1.60 Crore was sanctioned by the Applicant to the Corporate Debtor on 09.01.2004 and thereafter from time to time the same was renewed and enhanced. As on 31.10.2017 the sanctioned amount in respect of cash credit facility amounted to Rs. 35 Crore and the same was thereafter renewed for the same amount. In addition to the cash credit facility the applicant also provided a letter of credit facility to the Corporate Debtor, sanctioned amount of which as on 31.10.2017 amounted to Rs. 15 Crore. It is further observed that vide sanction letter dated 01.11.2019, the Applicant renewed two credit facilities i.e. Cash Credit Facility of Rs 35 Crores and Letter of Credit facility of Rs. 15 Crore in favour of the Corporate Debtor.

9.3. The Financial facilities were secured by various documents including Hypothecation of Stocks and Book Debt Agreement, Demand Promissory Notes and Registered Deed of simple mortgage dated 05/03/2011, 28/03/2013 (replacement of Security),12/07/2016, and 27/10/2017.

9.4. Further the Applicant has placed copy of certificate of Registration of charge issued by Registrar of Companies, copy of arbitration award dated 05.11.2022, copies of security documents executed by Corporate Debtor, Copies of Registered Mortgage Deeds as referred to in para 8.3, copies of statement of account of various facilities along with relevant Certificates under Bankers Book of evidence Act, 1891, which evidenced the disbursements made to the Corporate Debtor.

9.5. The Corporate Debtor became irregular in repayment of the financial facilities and his account was classified as NPA on 13.02.2020 and therefore the Corporate Debtor vide recall notice dated 05.07.2021, demanded the payment of the entire amount outstanding within a period of 10 days. However, the Corporate debtor defaulted in payment of the dues within the stipulated period.

9.6. Due to the non-payment of dues, the Applicant in order to recover its dues filed a Dispute Application u/s 84 of Multi State Co. Operative Societies (MSCS) Act, before the Ld. Arbitrator (duly appointed by Central Registrar, New Delhi), who upon verifying the documents and pleading passed an Award dated 05/11/2022 directing the corporate debtor to pay the sum of Rs. 52,89,51,16.215 (Calculated as on 30.06.2021) with further interest from 01.07.2021 till payment and/or realization.

9.7. Further, it is important to note that challenging the Arbitration Award, the Corporate Debtor filed an Commercial Arbitration Petition No 742/2025 before the Hon'ble Bombay High Court u/s 34 of Arbitration and Conciliation Act 1996. Hon’ble Bombay High Court vide order dated 12.02.2026 dismissed the said Commercial Arbitration Petition.

9.8. The Applicant issued a demand notice dated 18.06.2025 calling upon the Corporate Debtor to pay the outstanding amount as crystallised by the Ld. Arbitrator within a period of 10 days failing which the Applicant would initiate Corporate Insolvency Resolution Process against the Corporate Debtor. However, the Corporate debtor has not paid the outstanding amount till date.

9.9. As the corporate debtor failed to make payment of the outstanding dues pursuant to the demand notice dated 18.06.2025, the Applicant filed this Application being CP (IB)/1336/MB/2025 on 25.10.2025 claiming amount of Rs. 70.72 crores as based on the award dated 05.11.2022 calculated as on 31.03.2025.

9.10. Vide additional affidavit dated 02.02.2026 the applicant filed amended Form-1 pursuant to the order dated 08.12.2025 of this Tribunal. The said amended Form-1 stated the date of default as 28.06.2025 being the date on the expiry date of 10 days period granted by the Applicant vide its demand notice dated 18.06.2025 served upon the Respondent. It was further stated in Part-IV of the revised Form-1 that the record of default issued by NeSL stated the date of default as 13.02.2020, which means that letter of credit devolved on 13.11.2019 and became NPA on 13.02.2020, when it was overdue for more than 90 days.

9.11. Further, the Applicant has placed NeSL on record of default on record, which reveals the status of authentication of default as **"AUTHENTICATED"**.

9.12. It is important to note here that the Corporate Debtor in its reply has not denied the existence of debt or execution of loan agreement or default and has alleged that restructuring of the debt pursuant to the RBI guidelines was not allowed by the Applicant despite repeated requests. The Corporate Debtor also raised certain other objections in regard to the Application.

9.13. As per the scheme of the Code, at the time of consideration of an Application for initiation of CIRP against a Corporate Debtor, this Tribunal shall consider whether the debt is due, which is payable and whether the same is under default or not. In our considered view, the Financial Creditor has placed enough evidences and documents including copies of the sanction letters, Copies of Registered Mortgage Deeds executed by the Corporate Debtor , Hypothecation Agreements, Statement of Accounts along with Certificate under Bankers Books Evidence Act, 1891, NeSL record of default in Form D and award passed by Ld. Arbitrator, which was upheld by Hon'ble Bombay High Court, to demonstrate that a financial debt is due and payable and the same is defaulted by the Corporate Debtor.

9.14. The Corporate Debtor has raised certain objections to the Application filed by the Applicant. The said objections are considered in the following paragraphs

9.15. The first objection raised by the Corporate Debtor is that the present Application is barred by limitation. In this regard, it is observed that the claim of the Applicant already stands adjudicated by the Ld. Arbitral Tribunal composed of the learned Sole Arbitrator. A perusal of the Arbitral Award dated 05.11.2022 reveals a clear finding that the Corporate Debtor is liable to pay the outstanding dues to the Applicant. At this stage, reliance is placed on the law laid down by the Hon'ble Supreme Court in Dena Bank v. C. Shivakumar Reddy (2021) 10 SCC 330, wherein it was held as under:

> *"143. Moreover, a judgment and/or decree 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 decree 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 decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."*

9.16. Therefore, it is a settled position of law that an arbitral award or a decree gives rise to a fresh cause of action for initiating proceedings under the Insolvency and Bankruptcy Code, 2016.

9.17. In the instant case, the Arbitral Award was pronounced on 05.11.2022, which gave rise to a fresh cause of action to initiate proceedings under the Code, thereby extending the period of limitation up to 05.11.2025. Since the present Application was filed on 25.10.2025, the same is well within the prescribed period of limitation.

9.18. The Corporate Debtor's reliance on the judgement of Babulal Vardharji Gurjar vs Veer Gurjar Aluminum Industries Private Limited and Anr. Civil Appeal No.

6347 of 2019 is misplaced as the Application is filed well within limitation period of three years from the date of pronouncement of the Arbitral award passed on 05.11.2022.

9.19. The Corporate Debtor has raised further objection that the Financial Creditor failed to comply with the RBI Prudential Norms, the MSME Revival and Rehabilitation Framework and the RBI Directions before classifying its account as NPA. However, the said contention of the respondent is legally untenable. In connection with the above, it is relevant to refer to the judgment of Hon'ble Supreme Court in the matter of M/s Pro Knits vs The Board of Directors of Canara Bank & Anr. (2024) 10 SCC 292, wherein the Respondent Corporate Debtor was also one of the Appellants. In the said judgement, it has been held that MSMEs need to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the Banks concerned, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework. The relevant paragraphs of the said judgement are reproduced herein;

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

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

……

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

……

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

(Emphasis Supplied)

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

"8. Pro Knits is a decision of a co-ordinate Bench of this court holding, inter alia, that the notification is binding on the lending banks/secured creditors. Finding to the contrary by the High Court of Bombay in the judgment and order under challenge in the appeal was, thus, quashed. Though while stressing that the terms of the framework need to be followed by the lending banks/secured creditors before the account of an micro, small and medium enterprise is classified as non-performing asset, this decision also lays stress on the obligation of the micro, small and medium enterprises by holding that it would be equally incumbent on the part of the micro, small and medium enterprises

concerned to be vigilant enough to follow the process laid down under the said framework, and bring to the notice of the banks concerned, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said framework.

(Emphasis Supplied)

9.21. The corporate debtor has failed to bring any document on record to demonstrate that it had approached the applicant with the necessary request, duly supported by the documents evidencing its eligibility, for seeking restructuring of its debt under the MSME framework and therefore, the plea of the corporate debtor in this regard is not tenable considering the judgments as cited above.

9.22. This Tribunal is of the considered view that there can be no dispute regarding the binding nature of the RBI Directions and the MSME Framework upon banks. However, the limited jurisdiction of this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code is to ascertain whether a financial debt exists and whether a default, as defined under Section 3(12) of the Code, has occurred. In terms of Sections 7(3), 7(4) and 7(5), the existence of default is to be determined from the Information Utility records or other documentary evidences placed on record. In the present case, the Financial Creditor has produced the loan and security documents, certified Statements of Account, the Arbitration award which was further upheld by the Hon'ble Bombay High Court , and the authenticated NeSL Record of Default. These documents independently establish the occurrence of default.

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

9.24. Moreover, it is pertinent to note that as per the guidelines issued by the Reserve Bank of India (RBI) vide Circular dated March 17, 2016, titled *"Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs)"*, the applicability of the said framework is strictly confined to MSMEs having aggregate loan limits up to **Rs. 25 Crore**, including accounts exposure under consortium or Multiple Banking Arrangements (MBA).

9.25. Upon a careful perusal of the Master Data of the Corporate Debtor alongside the credit facilities extended by the Applicant Bank, it emerges that the total financial facilities availed by the Corporate Debtor substantially exceed the prescribed threshold limit of Rs. 25 Crore. Consequently, the Corporate

Debtor falls outside the purview of the aforesaid RBI Circular dated March 17, 2016, and is rendered ineligible to seek the benefits of revival and rehabilitation under the said Framework.

9.26. The Respondent has vehemently contended that this Adjudicating Authority lacks jurisdiction to entertain the present application on the ground that it arises out of a bilateral contractual dispute. Upon a careful perusal of the record, this Tribunal finds no merit in the said contention. The transaction in question squarely falls within the ambit of a "Financial Debt" as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016. The Applicant disbursed funds to the Corporate Debtor against the consideration for the time value of money, with a clear obligation on the part of the Corporate Debtor to repay the principal amount along with interest. The Corporate Debtor committed a default in fulfilling its repayment obligations. Moreover, once the twin criteria of debt and default are established and the debt exceeds the threshold prescribed under Section 4 of the Code, this Tribunal is bound to entertain the application, as the IBC is an independent statutory framework designed for corporate insolvency resolution.

9.27. In regard to the above, this Tribunal has relied on the judgment of Hon'ble Supreme Court passed in the matter of **Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors. Civil Appeal No(s). 2211/2024,** wherein the Hon'ble Supreme Court while examining the validity of the admission of the Corporate Debtor to CIRP has clearly laid down that the code restricts the scope of inquiry for admission of an Insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. Further, Hon'ble Supreme Court has also held that at the stage of considering the application for initiation of CIRP, neither is a corporate debtor entitled nor is the adjudicating authority required to examine any dispute regarding the existence of debt. Relevant paragraphs of the said judgement are reproduced hereunder :-

> ***B. Validity of CIRP Admission.***
>
> *28. The other aspect on which the Appellant has heavily relied is the acceptance of various sums of money paid by the Corporate Debtor purportedly under the 1st and 2nd restructuring proposals, which according to them amounts to deemed approval of such proposal. As discussed earlier, such argument flies in the face of the fact that the 2nd Respondent had resolutely maintained and rightly so, that the restructuring proposals were underpinned on pre-implementation conditions which the Corporate Debtor had failed to fulfil. Under such circumstances, receipt of various sums of money would not amount to acceptance of the restructuring proposals, thereby novating the earlier loan agreement. Neither would such part payments constitute full satisfaction of the existing debt so as to render the Section 7 application inadmissible.*
>
> *29. It has also been vociferously contended that the Corporate Debtor is an ongoing concern and does not lack the ability to repay the debt. It has a subsisting PPA for 25 years with WBSEDCL, and has raised bills of Rs. 906 crores from 01.11.2024 to 31.03.2025. It also has a continuous fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI scheme and had earned EBIDTA of Rs. 20 crore per month during the CIRP. These facts though attractive at first blush, do not yield either legal or factual justification to rebut the admission of the Section 7 application.*
>
> *30. On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. <u>The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non payment of a debt which has</u>*

become due and payable, and includes default in respect of a part or instalment thereof. Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. "Financial creditor" is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned.26 A "financial debt" means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.27 "Operational creditor" is defined as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned.28 "Operational debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central or State government, or any local authority.29 31. In Swiss Ribbons (P) Ltd. v. Union of India [(2019) ibclaw.in 03 SC],30 such classification of creditors as financial creditors and operational creditors has been held to be constitutionally valid. The Bench underscored the essential differences between a financial creditor and operational creditor and held that financial creditors were mostly secured creditors like banks and financial institutions who extended finance to enable a corporate debtor to set up and/or operate its business. Such credit is extended to a corporate debtor under well-defined loan agreements having specified repayment schedules and reserving rights to recall the loan in case of default or restructure the same enabling a corporate debtor to tide over unforeseen financial stress. On the contrary, operational creditors are mostly unsecured creditors and their claims are relatable to supply of goods and services in the operation of the business. Ordinarily, operational debts are not based on admitted documents and the possibility of genuine disputes with regard to such debts is much higher compared to financial debts.

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

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

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

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

<u>The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more.</u> The legislative intent behind

such prompt and summary intervention is "to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."

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

"61. In our view, the Appellate Authority (NCLAT) erred in holding that the adjudicating authority (NCLT) was only required to see whether there had been a debt and the corporate debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The adjudicating authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of Aptel referred to above and the overall financial health and viability of the corporate debtor under its existing management.

……………………………………………………………………

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

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

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

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

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

39. Even otherwise on facts, Vidarbha (supra) does not come to the aid of the Appellant. In Vidarbha (supra), this Court had taken note of an award passed by APTEL in favour of the corporate debtor which far exceeded the claim of the financial creditor, and held in the setting of such facts, initiation of CIRP was unwarranted. In the present case, Appellant's contention regarding Corporate Debtor's viability is highly dubious. Though the Corporate Debtor strenuously demonstrates its commercial viability, the NCLAT has noted that the extent of outstanding liability as on 02.01.2024 was Rs. 3103.31 crore, which far exceeds the bills raised on WBSEDCL to the tune of Rs 906 crore and EBITDA of Rs. 20 crore per month during the CIRP.

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

(emphasis wherever required supplied)

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

a. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non-payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.

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

c. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5).

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

e. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more.

9.28. Further the Respondent has raised an objection challenging the constitutional validity of the Insolvency and Bankruptcy Code 2016. With regard to the same, this Tribunal has relied on the judgement on Hon'ble NCLAT in the matter of Mohan Gems and Jewels Private Limited vs Vijay Verma and Anr. (2021) ibclaw.in 402 NCLAT has wherein the Hon'ble NCLAT held that neither NCLT nor NCLAT can look into legality and propriety of any Regulation/Notification/Rules/Act. The relevant paragraphs of the said judgement are reproduced hereunder;-

"26.<u>It is a well settled proposition that the legality and propriety of any Regulation/Notification/Rules/Act cannot be looked into by NCLT or NCLAT. The</u>

Tribunal can only ascertain whether the procedures provided for under the Code/Companies Act, 2013 are being followed or not. The Adjudicating Authority cannot go beyond this.

27. In 'Arun Kumar Jagatramka' Vs. 'Jindal Steel Power Ltd. & Anr.' reported in Civil Appeal No. 9664 of 2019, the Hon'ble Apex Court while discussing the issue, 'whether in a Liquidation Proceeding under the Code, a person ineligible under Section 29A of the Code, is permitted to propose a scheme for revival under Section 230 of the Companies Act, 2013, has noted in the Epilogue that 'the need for judicial intervention or innovation from the NCLT & NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC'.

9.29. Furthermore, the Hon'ble Supreme Court in the matter of Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India; Ors., (2019) ibclaw.in 03 SC, has upheld the constitutional validity of IBC Code 2016. The relevant para of the said judgement is reproduced hereunder:-

"The Insolvency Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole. Earlier experiments, as we have seen, in terms of legislations having failed, 'trial' having led to repeated 'errors', ultimately led to the enactment of the Code. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation. We have also seen that the working of the Code is being monitored by the Central Government by Expert Committees

that have been set up in this behalf. Amendments have been made in the short period in which the Code has operated, both to the Code itself as well as to subordinate legislation made under it. This process is an ongoing process which involves all stakeholders, including the petitioners."

9.30. In view of the facts and circumstances of the present case and applying the dictum laid down by the Hon'ble NCLAT in Mohan Gems (supra), this Adjudicating Authority does not have the jurisdiction to entertain the plea of constitutional validity of IBC code 2016 as contended by the Respondent. The contention of the Corporate Debtor in this regard is therefore rejected. Moreover, the constitutional validity of IBC has been upheld by Hon'ble Supreme Court in the Swiss Ribbon matter (Supra), relevant portion of which has been reproduced above.

9.31. The another contention of the Corporate Debtor that bank's conduct was malafide and there was gross breach of statutory duty on the banks side is not maintainable. Applicant has placed sufficient and cogent material which evidences that loans were sanctioned and disbursed to the Corporate Debtor , Security was provided by the Corporate Debtor, and the existence of debt is otherwise not denied by the Corporate Debtor. Moreover , if the Corporate Debtor had any grievance in regard to the conduct of the Applicant in not providing restructuring, interest relief, permission to sell mortgage assets and adjustment of FDRs and thereafter appropriating the FDRs and shares, thereby worsening the liquidity during COVID-19 period, it could have approached the regulator for the Banks i.e. RBI and/ or Registrar of Co-operative Societies (RCS) rather than raising the said issue before this Tribunal, which is otherwise satisfied about the existence of debt and default. As has been stated earlier that in view of various judgements including the judgment in the matter of Power Trust (Supra), this Adjudicating Authority is not required to go into the disputes between the applicant and the corporate debtor at the stage of considering the application under Section 7 for initiation of CIRP in respect of the corporate debtor.

9.32. As regards the objection of the Corporate Debtor in pursuing multiple remedies under the SARFAESI Act and execution of the Arbitral Award (including appointment of Sale Officer under Section 97 of the MSCS Act, 2002) under MSCS Act and that under IBC, we rely upon the judgment of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 854 of 2019 in Punjab National Bank vs. M/s. Vindhya Cereals Pvt. Ltd., wherein in paragraph Nos. 8 and 9 of the order of Hon'ble Appellate Authority, following was held:

> *"8. This Tribunal in the case of Company Appeal (AT) (Ins) No. 323/2019 (Neeraj Jain Vs. Yes Bank Ltd. & Anr.) decided on 10.04.2019 held that Section 7 being an independent proceeding is nothing to do with the pendency of Criminal Case relating to misappropriation of funds. This Tribunal in the case of App. (AT) (Ins) No. 1021/2019 (Karan Goeal Vs. M/s. Pashupati Jewellers & Ors.) decided on 01.10.2019 held that merely because suit has been filed by the Financial Creditor and pending cannot be ground to reject the application under Section 7 of the I&B Code.*
>
> *9. <u>In the light of above pronouncement, we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that</u>*

the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-obstante clause of the I&B Code will prevail over any other law for the time being in force."

9.33. In view of the facts and circumstances of the present case and applying the judgement laid down by the Hon'ble NCLAT in Vindhya Cereals Pvt. Ltd. (Supra), this Adjudicating Authority is of the considered view that Section 238 of the Code, containing an overriding non-obstante clause, shall prevail over other laws. Consequently, the pendency or initiation of multiple proceedings under the SARFAESI Act, 2002 or execution of arbitral award poses no bar to the maintainability of the present proceedings under the Code. The contention of the Corporate Debtor in this regard is therefore rejected .

9.34. Further the Corporate Debtor has contended that debt is disputed and that the respondent's counter claim exceeds the Bank's claim. In this regard we are of the view that the disputes between the applicant and the corporate debtor have been adjudicated upon by the Ld. Arbitrator, who has passed the award dated 05.11.2022 and that the said award has been upheld by Hon'ble Bombay High Court, which has vide its order dated 12.02.2026 dismissed the challenge to the said award made by the corporate debtor and therefore, the issue raised by the corporate debtor in respect of its counter claim against the applicant cannot be raised before this Tribunal. Moreover, it has already been held in the earlier paragraphs of this order that the disputes, if any, between the Applicant and the corporate debtor, in a Section 7 Application are not required to be considered by the Adjudicating Authority at this stage of considering the said application for admission. Moreover, the Adjudicating Authority has only to determine as to whether a debt exceeding the threshold of Rs. One crore exists and has been defaulted by the corporate debtor and the exercise of determining the exact dues of the Applicant payable by the corporate debtor are to be determined by the IRP/RP to be appointed in the matter. As there is an Arbitration Award wherein this exercise has already been made, the IRP/RP shall consider the said Award while admitting the claim of the applicant.

9.35. This Tribunal also places reliance on the decision of Hon'ble Supreme Court in the matter of Innoventive Industries Ltd. vs. ICICI Bank, Civil Appeal No. 8337-8338 of 2017, more particularly para 30 of the said decision, which is reproduced below: -

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

(Emphasis Supplied)

9.36. In view of the above judgment in Innoventive (Supra), we are of the view that the contention of the respondent that a commercial suit (No. 33569/2025) has been filed seeking the declaration that the entire recovery action at the hands of the petitioner bank is void ab-intio and liable to be set aside and quashed, which is pending for adjudication before the Hon'ble Bombay High Court, does not make Application under Section 7 inadmissible, as existence of debt and default exceeding the threshold of Rs. 1 Crore has been established by the Financial Creditor with the help of cogent documents including copies of the sanction letter, Copies of Registered Mortgage Deed executed by the Corporate Debtor, Hypothecation Agreement, Statement of Account along with Certificate under Bankers Books Evidence Act 1891, NeSL Form D and the order of Ld. Arbitrator, which has been upheld by Hon'ble Bombay High Court.

9.37. Relying on the judgment of Hon'ble Supreme Court in Innoventive (*supra*), we are of the view that once the applicant has proved that there exists a financial debt, we need not look into the dispute at this stage of Admission.

9.38. Reliance is also being placed on judgement of Hon'ble NCLAT in the matter of Vishal Doshi vs Bank of India and Anr (2020) ibclaw.in 230 NCLAT wherein it was held that the Counter Claim and the set off as claimed cannot be decided by the Adjudicating Authority. The relevant paragraphs of the said judgement are reproduced below.

" 17. With regard to Counter claim is concerned, the Adjudicating Authority cannot decide while admitting the Application. As such, all the essential requirements have been fulfilled and Application under Section 7 IBC was rightly admitted by the Adjudicating Authority. The Hon'ble Supreme Court in "Swiss Ribbon Private Limited & Ors. Vs. Union of India & Ors." [Writ Petition (Civil) No. 99 of 2018] reported in (2019) 4 SCC 17 at paragraphs 35 and 36 held as under:]

“35. Insofar as set-off and counterclaim is concerned, a set-off of amounts due from financial creditors is a rarity. Usually, financial debts point only in one way – amounts lent have to be repaid. However, it is not as if a legitimate set-off is not to be considered at all. Such set-off may be considered at the stage of filing of proof of claims during the resolution process by the resolution professional…..”

36. Equally, counterclaims, by their very definition, are independent rights which are not taken away by the Code but are preserved for the stage of admission of claims during the resolution plan…..”

18. The Counter Claim and the set off as claimed by the Appellant herein cannot be decided either by the Adjudicating Authority or by this Appellate Tribunal, we refrain from interfering with such issues.”

9.39. The plea raised by the Respondent/Corporate Debtor asserting that the Arbitral Award is void ab initio for want of jurisdiction is completely misconceived and non-maintainable. The challenge to the legal validity of the said Award has already attained finality, as the Hon'ble Bombay High Court, vide its order dated 12.02.2026, was pleased to dismiss the appeal preferred against the Arbitral Award. Additionally, the Corporate Debtor has failed to demonstrate that any appeal has been preferred against the order of the Hon'ble High Court before the Hon'ble Supreme Court, nor has it produced any operational order staying the execution or enforcement of the Arbitral Award. Hence there is no legal impediment to proceed under this Application. Moreover, the Applicant has placed cogent documentary evidence, including the statement of accounts, which clearly establishes an unequivocal default well in excess of the statutory threshold of Rs. 1 Crore prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016.

9.40. Furthermore, it is a settled position of law that this Adjudicating Authority, exercising summary jurisdiction under the Code, is not vested with the statutory mandate or appellate power to adjudicate upon, review, or invalidate a final and binding Arbitral Award.

9.41. In view of the above, the Applicant has successfully demonstrated the existence of a financial debt, as the transaction involves money borrowed against the payment of interest under section 5(8)(a) of IBC 2016, the occurrence of default, which is way above the threshold as stipulated under Section 4 of the Code, and continuing nature of such default supported by clear documentary evidence. Moreover, the issues and objections raised by the Respondent Corporate Debtor have been dealt with in the earlier paragraphs and have been found to be non-tenable.

9.42. Financial Creditor has also proposed the name of an Insolvency Professional (IP) i.e. Mr. Anil Vrijdas Rajkotia, having Registration No. IBBI/IPA-001/IP-P01045/2017-2018/11718 and Authorization for Assignment (AFA) which is valid upto 31.12.2026 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.

9.43. 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.

10. It is important to state here that the Respondent has, after this CP was reserve for order, filed IA No. 3679 of 2026, seeking to recall/ reopen the hearing in this CP for granting the Ld. Counsel for the Respondent a further opportunity of hearing. The said IA was considered at the hearing held on 25.08.2026 and was reserved for order. An order in the said IA is also being separately pronounced today.

ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) 1336/MB/2025 filed under Section 7 of IBC, 2016, by Abhyudaya Co-Operative Bank Ltd, the Applicant (FC) ,for initiating CIRP in respect of A.Navinchandra Steels 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. Anil Vrijdas Rajkotia , having Registration No. IBBI/IPA-001/IP-P01045/2017-2018/11718 and **e-mail address** anilrajkotia@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. 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.

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

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

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

XII. 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.

XIII. **A compliance report of the order by the Designated Registrar is to be submitted today.**

Sd/-	**Sd/-**
NILESH SHARMA **MEMBER (JUDICIAL)**	**SAMEER KAKAR** **MEMBER(TECHNICAL)**

//Sumant//