THE NATIONAL COMPANY LAW TRIBUNAL

CHANDIGARH BENCH (COURT-I), CHANDIGARH

CP(IBC) No. 275/Chd/Hry/2024

(Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016,)

In the matter of:

M/s. NIMBUS INTERNATIONAL PVT. LTD.
CIN NO. U52100GJ2012PTC070896
302, Siddhi Vinayak Complex, Near Central Salt, Waghawadi Road, Bhavnagar
Gujarat, India, 364002
PAN NO. AAECN0442N
EMAIL ID: nimbusintenationalpvtltd@gmail.com

… Petitioner/Financial Creditor

V/S

MRISHI MARCNDEY INDIA LTD.
CIN: U45100HR1996PLC124054 NEW CIN U45100DL1996PLC083354 OLD CIN
PAN NO. AABCS5815K
First Floor at Shop on Barada Road, Near Sandhu Dharam Kanta, Shahabad Markanda, Shahabad, District Kurukshetra, Shahabad, Haryana, India-136135.
EMAIL: mrishimarcndeyindialtd@gmail.com

...CORPORATE DEBTOR

Order delivered on: 19.08.2026

<u>Coram</u>: SH.VINAY GOEL, HON'BLE MEMBER (JUDICIAL)
SH. SHISHIR AGARWAL, HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Petitioner : Mr. Sandeep Wadhawan, Advocate
Mr. Gurjot Singh, Advocate

For the Respondent : Mr. Viren Sharma, Advocate
Mr. Suvir Tandon, Advocate

O R D E R

Per Coram

1. This Petition has been filed by **M/s. NIMBUS INTERNATIONAL PVT. LTD**, a Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **MRISHI MARCNDEY INDIA LTD**, Corporate Debtor for initiation of Insolvency Process.

2. Part I of the petition sets out the particulars of the Financial Creditor. It is pleaded that the Financial Creditor is a company incorporated on 25.06.2012 under the provisions of the Companies Act, 1956, bearing Corporate Identification Number CIN NO. U52100GJ2012PTC070896 and PAN NO. AAECN0442N. The registered Office of the Financial Creditor is situated at 302, Siddhi Vinayak Complex, Near Central Salt, Waghawadi Road, Bhavnagar, Gujarat, India, 364002. The Financial Creditor is engaged, inter alia, in the trading and dealing of various types of ferrous and non-ferrous metal scrap.

3. As per Part II of the petition, the Respondent/Corporate Debtor is a Public Limited Company with Corporate Identification Number: CIN: U45100HR1996PLC124054. The date of incorporation is 19.11.1996. The registered office of the Respondent/Corporate Debtor is situated at First floor of a shop on Barada Road, Near Sandhu Dharam Kanta, Shahabad Markanda, Shahabad, District Kurukshetra, Shahabad, Haryana, India-136135.

4. Perusal of Part III of the Petition reveals that the Petitioner/Financial Creditor has proposed Prashant Gupta, having its office at H.No.104, Sector 25, Panchkula, Haryana. Email: pgupta.rp@gmail.com, bearing Registration No. IBBI/IPA-001/IP-P-02471/2021-2022/13868, to act as the Interim Resolution Professional (IRP). The proposed IRP has filed its written consent in Form-2, annexed to the Petition, in compliance with Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

5. Part IV of the petition signifies the amount of debt to the tune of Rs. Rs.1,36,25,000.00/-. The date of default is 16.05.2024.

6. It is the case of the Petitioner that the Corporate Debtor approached the Financial Creditor seeking financial assistance in the form of an unsecured loan of **Rs. 1,25,00,000/- (Rupees One Crore Twenty-Five Lakhs only)** for a period of two months. The Financial Creditor, having accepted the said request, agreed to extend the loan at an agreed rate of interest for the aforesaid period of two months, pursuant to which the parties entered into an Agreement dated 15.03.2024. It is submitted that the said loan was granted to the Corporate Debtor to facilitate the orderly discharge of its creditors and to meet its day-to-day business requirements, including the repayment of its outstanding debts. In terms of the Agreement, the Petitioner disbursed the loan amount on 16.03.2024 through RTGS transfers in three lots, namely, Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) and two lots of Rs. 50,00,000/- (Rupees Fifty Lakhs only) each, from its account maintained with Rajkot Nagarik Sahakari Bank Ltd**.**

7. The Petitioner has placed on record the statement of account maintained with the said bank as evidence of the aforesaid remittances. It is further submitted that the Respondent/Corporate Debtor had agreed to pay interest on the loan amount at the rate of 1.5% per month.

8. Though the Respondent/Corporate Debtor availed the loan facility, it failed and neglected to repay either the principal amount or the accrued interest in accordance with the terms agreed between the parties.

9. On 23.07.2024, the Corporate Debtor, while acknowledging the outstanding amount and its liability towards the Petitioner, sought additional time to make the repayment. Thereafter, on 25.07.2024, the Petitioner, accommodating the request of the Corporate Debtor, granted further time for repayment. However, on 27.07.2024, the Corporate Debtor once again sought a further period of seven days to clear the outstanding dues, while expressly acknowledging its liability towards the Petitioner.

10. The Petitioner thereafter issued a notice dated **05.09.2024**, which was duly sent to the Corporate Debtor by email as well as by post on **30.09.2024**, calling upon the Corporate Debtor to repay the outstanding amount. Despite receipt of the said notice, the Corporate Debtor failed and neglected to make payment of the outstanding dues. Consequently, having no other efficacious remedy, the Petitioner has approached this Hon'ble Adjudicating Authority seeking initiation of the insolvency resolution process against the Corporate Debtor in accordance with law.

11. Upon receipt of notice, the Respondent appeared before this Adjudicating Authority and filed its Reply Affidavit, wherein it questioned the maintainability of the present Petition and contended that the same is based on false, misleading, and baseless facts. It is further contended that the Petition is not maintainable as the same has not been duly filed and signed by a person duly authorised in terms of the Resolution dated **12.03.2025**.

12. The Respondent further submitted that the Corporate Debtor is an unlisted public company, incorporated on 19.11.1996. The Respondent relied upon and referred to the definitions of "Financial Creditor" and "Financial Debt" as contained in the Insolvency and Bankruptcy Code, 2016 and contended

that the Petitioner has erroneously characterised itself as a Financial Creditor within the meaning of the provisions of the IBC, 2016.

13. It is further submitted by the Respondent that the alleged debt does not fall within the ambit or satisfy the essential ingredients of “Financial Debt” as defined under the IBC, 2016. The Respondent submitted that the burden lies upon the Petitioner to establish the existence of a financial debt by producing sufficient and cogent documentary evidence. According to the Respondent, the Petitioner has failed to discharge the said burden. It is further contended that an entity cannot be classified as a “Financial Creditor” merely by reason of having undertaken financial transactions with the Corporate Debtor, unless such transactions satisfy the essential ingredients and statutory requirements of a “Financial Debt” under the IBC, 2016.

14. The respondent submitted that the Petitioner has failed to provide any concrete agreement, contract, or supporting evidence proving that the transaction would qualify as a “Financial Debt”. It is further submitted that the Petitioner has failed to provide a complete and proper statement of accounts demonstrating the existence of any “Default” as mandated under the IBC.

15. Further, the Respondent disputes the correctness and veracity of the statement of accounts submitted by the Petitioner and submits that the Petitioner has failed to submit a duly certified, audited, and complete set of financial records, which is fatal to the present Petition. It is further submitted that the financial statements of the Corporate Debtor do not reflect any liability towards the Petitioner.

16. It is further submitted that the objective of the IBC is not recovery but resolution, and that the Petitioner intends to misuse the provisions of the IBC as a coercive tool for debt recovery, which is impermissible. The Petitioner’s conduct indicates that its primary intention is recovery and not

resolution; as such, the Petition merits dismissal, as the Petitioner cannot be permitted to misuse the process of the IBC.

17. We have heard both sides and have also gone through the records. The present Petition has been filed by the Petitioner for initiation of the insolvency process under Section 7 of the IBC, on the ground that the Respondent availed of a loan of Rs. 1,25,00,000/- for a period of two months, but failed to repay the same despite acknowledging its liability, seeking time for repayment on receipt of demand notices.

18. The Respondent, on the other hand, raised several contentions questioning the validity and maintainability of the present Petition. The Petitioner, along with the Petition, has placed on record the following documents in support of its claim: -

i. Copy of Master Data of Financial Creditor Nimbus International Private Limited as ANNEXURE P-1

ii. Copy of Demand Notice dated 29-34 25.09.2024 sent on 27.09.2024 through email and 30.09.2024 through Speed Post as ANNEXURE P-5.

iii. Copy of Loan Agreement dated 15.03.2024 as ANNEXURE P-7.

iv. Certified copy of Statement of Account of the Financial Creditor showing disbursement of Loan to Corporate Debtor maintained at Rajkot Nagrik Sahakari Bank Limited, Bhavnagar Branch, Bhavnagar as ANNEXURE P-8.

v. Copy of Ledger Account of Corporate Debtor maintained with Financial Creditor as ANNEXURE-P9.

vi. Copy of Latest Provisional Balance Sheet of Financial Creditor Nimbus International showing the name of Corporate Debtor in the list of Loans and Advances as ANNEXURE P-10.

19. Upon perusal of the said documents, it is apparent that the amount was disbursed through a banking transaction by way of RTGS. The Respondent has failed to deny the receipt of the said amount. Further, in its entire Written Statement, the Respondent has failed to deny the existence of the loan or the execution of the Loan Agreement dated 15.03.2024. The Respondent has also failed to deny the existence and genuineness of the email communications as well as the issuance and receipt of the demand notices.

20. The Respondent has raised some concerns and taken multifarious defence to question the validity and maintainability of the present Petition.

21. In the absence of any specific denial in respect of the facts and documents, the defence taken by the Respondent appears to be hollow and without any substantive factual basis. The Respondent has attempted to raise certain legal objections; however, it is a settled proposition of law that where an advance is made for business purposes, against payment of interest, such transaction would fall within the ambit of "Financial Debt", being a disbursement made against the consideration for the time value of money. It satisfies the requirement of Section 7 of IBC,2016.

22. Once the Respondent has failed to dispute the signatures, receipt of the amount, execution of the Agreement, and its corresponding liability, the defence raised in the Written Statement cannot be sustained in law. If the Petitioner has established the existence of the debt and default, and the amount of debt exceeds the prescribed threshold, and the transaction is

within the period of limitation as on the date of filing of the Petition, this Adjudicating Authority is bound, in accordance with law, to admit and allow the present Petition. We can rely upon the judgment of the Hon'ble Supreme Court in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022), ibclaw.in 91 SC.*** **The same is reproduced as under: -**

> ***"87. Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition."***

23. In light of the above case law, we find no legal impediment to admit this Petition for initiation of Insolvency Resolution Process against the respondent. It is hereby ordered as follows: --

i. The Petition bearing **CP(IBC) No. 275/Chd/Hry/2024** filed by **M/s. NIMBUS INTERNATIONAL PVT. LTD**, the Petitioner/Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP against **MRISHI MARCNDEY INDIA LTD**, the Respondent/Corporate Debtor, is hereby **ADMITTED.**

ii. There will be a moratorium under section 14 of the Code.

iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the Code or passes an order for liquidation of the Corporate Debtor under section 33 of the Code, as the case may be.

iv. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code, read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

v. The Financial Creditor has proposed the name of one Mr. Prashant Gupta, having its office at H.No.104, Sector 25, Panchkula, Haryana. Email: pgupta.rp@gmail.com, bearing Registration No. IBBI/IPA-001/IP-P-02471/2021-2022/13868, as Interim Resolution Professional (IRP). He had filed his written consent in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him with the Board or the Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by Mr. Prashant Gupta as per the requirements of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the Code. Hence, we appoint **Mr. Prashant Gupta** as the IRP of the Respondent/Corporate Debtor.

vi. The IRP shall carry out his functions as contemplated by sections 15 to 21 of the Code.

vii. During the CIRP period, the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.

viii. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

ix. The Petitioner/Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).

x. In terms of section 7 (7) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.

xi. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt of a copy of this order.

xii. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

24. The Registry is directed to send e-mail copies of this order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

25. Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

SD/-	SD/-
SHISHIR AGARWAL **MEMBER (TECHNICAL)**	**VINAY GOEL** **MEMBER (JUDICIAL)**

RKR/Steno