NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-2

C.P.(IB)/1415(MB)2025

CORAM

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING DATED **11.08.2026**

NAME OF THE PARTIES **:** **Bank Of Maharashtra**

Vs

Tirumalla India Storehouse Private Limited

Under Section 7 of the IBC, 2016.

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)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/1415/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]

Bank of Maharashtra

Head Office: Lokmangal, 1501, Shivajinagar, Pune-411005.

Branch Office: Asset Recovery Branch,

Chhatrapati Sambhaji Nagar, Mahabank Bhavan,

C-3, N-1, Town Centre, CIDCO, Chhatrapati Sambhaji

Nagar - 431003 **Email: brmgr1454@mahabank.co.in**

bom1454@mahabank.co.in

…Financial Creditor

Vs.

Tirumalla India Storehouse Private Limited

Registered office at: Office No. 1104,

11th Floor, The Pacific, Plot No. 229 Sector 13,

Kharghar, Navi Mumbai, Raigarh, Panvel,

Maharashtra, India, 410210

Email: roc@thekutegroup.com

...Corporate Debtor

Pronounced: 11.08.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Mr. Prashant Gawali a/w Adv. Mr. Gaurav Devdhekar i/b Mahalkshmi Ganapathy.

For Respondent: Ex-parte

ORDER

[PER: CORAM]

1. BACKGROUND

1.1. This is an Application filed under Section 7 of Insolvency and Bankruptcy Code, 2016 **Bank of Maharashtra,** (hereinafter referred to as "the Financial Creditor") against **Tirumalla India Storehouse Private Limited,** (hereinafter referred to as "the Corporate Debtor") seeking commencement of CIRP, appointment of IRP and declaration of moratorium upon the Respondent.

1.2. Perusal of the Part I of the Application reveals that the Applicant is **Bank of Maharashtra,** (hereinafter referred to as "the Financial Creditor") through its Authorised Officer **Somnath Bajrang Sasane** Chief Manager, Asset Recovery Branch Chhatrapati Sambhaji Nagar, Mahabank Bhavan, C-3 N- 1, Town Centre CIDCO, Chhatrapati Sambhaji Nagar – 431003, duly authorised in this regard. The Applicant has its PAN: AACCB0774B and was incorporated on 16.09.1935. The Applicant is registered under CIN: U63030MH2017PTC297426.

1.3. Part II of the application reveals that the Corporate Debtor is **one Tirumalla India Storehouse Private Limited.** The Corporate Debtor is registered under CIN: U63030MH2017PTC297426 and was incorporated on 17.07.2017.

1.4. Perusal of the Part III reveals that the Applicant has named **Mr. Mangesh Vitthal Kekre,** 607, Chetak Center, RNT Marg, Near Hotel Shreemaya, Indore, Madhya Pradesh ,452001 **Email ID: ca.mangesh@gmail.com** having IP Registration No. ***IBBI/IPA-001/IP-P00539/2017-2018/10964***. The proposed IRP has given his consent in Form No. 2 which is appended at Page No. 28 to 32. The AFA of the proposed IRP is valid till 31-Dec-26.

1.5. As per Part IV of the Application, the amount claimed to be in default is Rs. 17,98,68,464.00/- (**Seventeen Crore Ninety-Eight Lakh Sixty-Eight Thousand Four Hundred Sixty-Four Rupees Only**.)

1.6. The date of default is **05.11.2025** as mentioned in Part IV of the Application.

2. CONTENTIONS OF APPLICANT (FC)

Description of facility:

2.1. It is stated that the Principal Borrower - M/s Tirumalla Agro Industries Pvt. Ltd. (Borrower) has obtained various credit facilities from the Applicant - Bank of Maharashtra under consortium lending, guaranteed by corporate guarantee of present Corporate Guarantor.

Debt amount:

2.2. It is stated that the Borrower was sanctioned a total amount of Rs. 16,00,00,000/- by the Applicant. The details of which is as follows:-

S. No.	Date of sanction	Nature of facility	Amount Sanctioned (INR)
1	19.12.22	Term Loan under "Maha ' Krishi Samrudhi Yojana"	6,00,00,000
2		Term Loan under "Maha Krishi Samrudhi Yojana"	8,00,00,000
3		Cash Credit under "Maha Krishi Samrudhi Yojana	2,00,00,000
		Total	**16,00,00,000**

The Applicant is holding the following securities: -

2.3. Industrial plot in industrial Survey no. 55, Plot No. 18 at Beed Taraf Bodde Taluka, Hanuman Nagar, Beed, admeasuring 38659.50 Sq. ft., having building admeasuring 3415.69 Sq. Mtrs. Owner M/s Tirumalla India Store House Pvt. Ltd. valued at Market Value Rs. 8.18 crore as per valuation report dated 23.07.2024 valued by M/s. Techno Valuers. The date of creation of security is 09.01.2023.

3. **The Applicant has relied upon the following documents:**

   i. Copy of the Authorization Letter of person authorized to submit application on behalf of Applicant.

   ii. Copy of the MCA Master data of the Corporate Guarantor along with details of directors as available on MCA and index of charges & Memorandum of Association.

   iii. Copy of the Consent Letter in Form-2 along with IBBI registration certificate and AFA of the proposed IRP.

iv. Copy of the Computation of claim amount.

v. Copy of the certificate of registration of charge issued by the Registrar of Companies.

vi. Copy of the NeSL record of Default in respect of principal borrower.

vii. Copy of the Sanction Letter dated 19.12.2022.

viii. Copy of the Sanction Letter for amendment in terms of sanction dated 09.01.2023.

ix. Copy of the Joint Consortium Agreement dated 09.01.2023.

x. Copy of the Joint Deed of Hypothecation dated 09.01.2023.

xi. Copy of the Guarantee Agreement for all facilities except Copy of the Deed of Mortgage dated 09.01.2023.

xii. Copy of the Deed of Mortgage dated 09.01.2023

xiii. Copy of the CIBIL report of principal borrower.

xiv. Copy of the statement of account in relation to the Term Loan facility of INR 800 Lacs granted to the Principal Borrower.

xv. Statement of account in relation to the Term Loan facility of INR 600 Lacs granted to the Principal Borrower.

xvi. Copy of the statement of account in relation to the Cash Credit facility of INR 200 Lacs granted to the Principal Borrower.

xvii. Copy of the certificate u/s 2A of the Banker's Book Evidence Act, 1891.

xviii. Copy of the notice u/s 13(2) issued under SARFAESI 14.05.2024 Act, 2002 dated 14.05.2024.

xix. Copy of the notice dated 29.10.2025 invoking guarantee along with paper publication.

4. ADDITIONAL AFFIDAVIT (FC) dated 20.01.2026

4.1. Additional Affidavit dated 06.02.2026 was filed by the Applicant through Mr. Somnath Bajrang Sasane s/ o Bajrang Sasane, who is stated to be a Chief Manager & Authorised officer of the Applicant.

4.2. It is stated that the present affidavit is being filed in compliance with the directions passed by this Hon'ble Bench during the hearing dated 19.01.2026 in CP (IB) No. 1415 (MB) of 2025, whereby the Applicant was directed to clarify and amend the date of default, place on record the CIRP order of the Principal Borrower, and disclose the status of claim filed before the Resolution Professional of principal borrower.

4.3. It is stated that That the Respondent Company is a Corporate Guarantor for the credit facilities availed by the Principal Borrower, namely Tirumalla Agro Industries Private Limited.

4.4. It is stated that the Applicant Bank had issued a notice invoking the corporate guarantee calling upon the Corporate Guarantor to discharge its liability under the guarantee vide notice dated 29.10.2025, annexed as Annexure 19 to the main petition. However, the said notice of invocation was returned undelivered.

4.5. It is stated that the immediately upon return of the invocation notice undelivered, the Applicant Bank caused paper publication of the said invocation notice on 20.11.2025 in English newspaper *namely Indian Express and Free press Journal and vernacular language newspaper namely Navshakti and Loksatta* circulating in the area where the registered office of the Corporate Guarantor is situated. The publication granted seven (7) days' time to the Corporate Guarantor to make payment of the outstanding debt. The paper publications are annexed to the main Company Petition as Annexure 19 (Page No. 194 to 197).

4.6. It is stated that since the Corporate Guarantor failed to make payment even pursuant to the said public notice, the date of default is correctly reckoned as seven (7) days from the date of publication, i.e. 28.11.2025.

4.7. It is stated that vide this affidavit, the applicant is placing on record the correct date of default for the Respondent - Corporate Guarantor. Accordingly, the date of default stands corrected to 28.11.2025 and may please be referred for further adjudication in this matter.

4.8. It is stated that the Corporate Insolvency Resolution Process (CIRP) of the Principal Borrower - Tirumalla Agro Industries Private Limited was ordered to be commenced by this Hon'ble Tribunal vide order dated 09.10.2025 passed in a section 9 application [C.P. (IB) No. 181/MB/2025] filed by one Operational Creditor namely Aryatech Platforms Private Limited. A copy of the said order dated 09.10.2025 is annexed herewith and marked as Annexure "P/2".

4.9. It is stated that pursuant to initiation of CIRP of the Principal Borrower, the Applicant Bank duly submitted its claim of Rs.17,87,02,283 before the Interim Resolution Professional in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the regulations framed thereunder. The said claim has been admitted by the Interim Resolution Professional and the entire claim remains outstanding/ unpaid as on date.

4.10. It is stated that the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Guarantor is fully maintainable in law.

5. REPLY BY CORPORATE DEBTOR

5.1. Pursuant to the order dated 10.02.2026, notice was directed to be served upon the Corporate Debtor along with a copy of the Company Petition and the additional affidavit filed by the Applicant.

5.2. The Applicant has placed on record an Affidavit of Service demonstrating that service was effected upon the Corporate Debtor through various modes including e-mail, speed post, affixture and dasti service. It is further evident from the record that the registered office of the Corporate Debtor was found closed at the time of physical service, whereupon the notice was affixed at the said premises.

5.3. Vide order dated 02.04.2026, this Tribunal, upon being satisfied with the mode and manner of service, recorded that service upon the Corporate Debtor was complete and granted a final opportunity to appear and file its reply.

5.4. Despite adequate opportunities and valid service of notice, the Corporate Debtor failed to enter appearance or file any reply controverting the averments made in the Company Petition. Consequently, vide order dated 04.05.2026, the right of the Corporate Debtor to file reply was closed and the Corporate Debtor was proceeded against ex-parte.

5.5. In the absence of any reply or material placed on record by the Corporate Debtor, the averments made by the Applicant remain unrebutted. The matter, therefore, proceeds for consideration on the basis of the pleadings, documents and submissions advanced on behalf of the Applicant

6. ANALYSIS AND FINDINGS

6.1. We have perused the documents as placed before us and have heard the Ld. Counsel for the Applicant. Our findings in the matter are as contained in the following paragraphs.

6.2. The Applicant bank has provided various credit facilities in the form of two term loans and case credit under Maha Krishi Sambrudhi Yojna to the principal borrower M/s. Tirumalla Agro Industries Pvt. Ltd for an amount of Rs. 16.00 Crore vide sanction letter dated 19.12.2022. The said credit facilities were guaranteed by the corporate debtor herein vide Guarantee Agreement dated 09.01.2023.

6.3. The corporate debtor has also mortgaged its land and building admeasuring 38,659.50 square feet and 3415.69 square mtrs, respectively in favour of the applicant to secure the credit facilities provided by the applicant to the principal borrower. The deed of mortgage was executed by the corporate debtor on 09.01.2023.

6.4. In support of the above transactions, the applicant has attached copy of the sanction letter dated 19.12.2022, Sanction Letter for amendment in terms of the Sanction dated 09.01.2023, copy of the Deed of Mortgage dated 09.01.2023, copy of the Guarantee Agreement dated 09.01.2023 executed by the Corporate Debtor and copy of the Certificate of Registration of charge issued by the Registrar of Companies.

6.5. The Principal Borrower committed default in making payment of the term loan facilities and for keeping the cash credit account as regular and consequently the applicant initiated an action under the provision of SARFAESI Act, 2022 by issuance of a notice under Section 13(2) of the said Act on 14th May, 2024. This Tribunal vide order dated 09.10.2025, in application filed by one of the operational creditors of the Principal Borrower namely Aryatech Platforms Pvt Ltd, initiated the Corporate Insolvency Resolution Process in respect of the Principal Borrower.

6.6. In view of the default committed by the Principal Borrower in regard to the credit facilities granted to it, the applicant issued a notice on 29.10.2025 invoking the corporate guarantee calling upon the corporate guarantor to discharge its labilities under the Guarantee Deed dated 09.01.2023. however the said notice of invocation was returned undelivered. Consequently, the applicant caused publication of the said invocation notice on 20.11.2025 in English Newspapers namely Indian Express and Free Press Journal and vernacular language newspaper namely Navshakti and Loksatta circulating in the area where the registered office of the corporate guarantor is situated. The publication granted 7days' time to the corporate guarantor to make payment of the outstanding dues.

6.7. However, the Corporate Guarantor failed to make payment even pursuant to the said public notice.

6.8. Consequently, the applicant has filed this application under Section 7 of IBC, 2016 for initiation of Insolvency Resolution Process against the Corporate Guarantor. The outstanding claimed in the application in Rs.

17,98,68,464 and date of default is 05.11.2025. The date default was subsequently amended by the applicant vide Additional Affidavit dated 20.01.2026 to 28.11.2025 based on the expiry of 7 days period, within which the Corporate Debtor was required to clear the outstanding as per the invocation notice published in deferent newspapers on 20.11.2025.

6.9. In support of the invocation of guarantee, the applicant has along with the application attached the notice invoking the Corporate Guarantee dated 29.10.2025. The said notice was returned undelivered. The applicant has also attached along with the application, copies of newspaper publications made on 20.11.2025 invoking the Corporate Guarantee.

6.10. In support of the existence of debt and default, the applicant has, in addition to the evidences invoking the Corporate Guarantee, also attached copies of statement of account of the Principal Borrower in books of the applicant in respect of all the three facilities, duly supported by Bankers Book Evidence Act Certificates and copy of the notice under Section 13(2) of the SARFAESI Act 2002. The transactions documents including sanction letters, Mortgage Deed, Guarantee Agreement, Joint Consortium Agreement dated 09.01.2023 and Joint Deed of Hypothecation dated 09.01.2023 have also been attached alongwith the Application.

6.11. The Applicant has also stated vide its Additional Affidavit dated 20.01.2026 debt it has filed a claim in the CIRP of the Principal Borrower for an amount of Rs. 17.87 crores which has been admitted by the Interim Resolution Professional.

6.12. As the Corporate Debtor failed to file any reply to the Application and also to make appearance before this Tribunal, vide order dated 04.05.2026, this Tribunal closed the right of the Corporate Debtor to file reply and the Corporate Debtor was also set ex-parte vide the same order. In absence of any representation or reply by the Corporate Debtor, this bench has, while passing this order relied upon the documents as placed on record by the applicant alongwith the application and also vide its Additional Affidavit dated 20.01.2026.

6.13. The applicant has also attached alongwith the application NeSL record of default in Form-C with respect to the Principal Borrower.

6.14. This bench also holds that as the revised date of default is 28.11.2025, this application is well within the limitation period.

6.15. In view of the above, this bench is convinced that the Corporate Debtor has extended its Corporate Guarantee to the Applicant in respect of the dues of the Principal Borrower M/s. Tirumalla Agro Industries Pvt Ltd, the Principal Borrower has defaulted in repayment of the said dues to the applicant, the Corporate Guarantee was therefore invoked by the applicant and that the Corporate Guarantor has defaulted in making payment of the outstanding demanded by the applicant. The debt defaulted by the Corporate Debtor amounts to Rs. 17,98,68,464, which exceeds the threshold of Rs. One Crore as per Section 4 of IBC, 2016 and in view of the same, this application needs to be admitted.

6.16. Further this Tribunal has relied upon the Judgement of Hon'ble Supreme Court 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 has *while examining the validity of the admission of the Corporate Debtor to CIRP laid down as under :-*

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

that the net worth of the Corporate Debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. 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. 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. 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.

……………………………………………………………………

<u>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."</u>

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)

6.17. 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.

6.18. In view of the above discussion, 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.

6.19. Financial Creditor has also proposed the name of an Insolvency Professional (IP) i.e. **Mr. Mangesh Vitthal Kekre**, having ***Registration No. IBBI/IPA-001/IP-P00539/2017-2018/10964*** as the proposed IRP and as per the Form 2 attached along with the Application, no disciplinary proceedings are going on against the said IRP. 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.

6.20. We make it clear that at this stage we have not crystallised the amount as claimed in this Application; the same is left to be collated by the IRP.

ORDER

In view of the aforesaid findings, this Application bearing **C.P. (IB) 1415/MB/2025** filed under Section 7 of IBC, 2016, by **Bank of Maharashtra** , the Applicant (FC) for initiating CIRP in respect of **Tirumalla India Storehouse 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. Mangesh Vitthal Kekre**, having ***Registration No. IBBI/IPA-001/IP-P00539/2017-2018/10964***. and **Email ID: ca.mangesh@gmail.com** having valid Authorisation for Assignment up to 30-12-2026 (as per IBBI site) as the IRP to carry out the functions under the IBC.

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

VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.

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

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

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

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

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

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

XIV. It is observed that the Corporate Debtor is a real estate developer. Accordingly, the Resolution Professional (RP) is directed to display Form A on a flex sheet of reasonable size at a conspicuous place, preferably at the main gate or another prominent location within the premises of the development project, so as to ensure adequate public notice.

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

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

frk