

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**Company Petition No. (IB) – 584/(ND)/2023**

**IN THE MATTER OF:**

**IIFCL Asset Management Company Limited**

5th Floor, Block- 2,  
Plate-A, NBCC Tower East Kidwai Nagar,  
New Delhi-110023

**... Applicant/  
Financial Creditor**

**VERSUS**

**Mission Holdings Private Limited**

311, 3<sup>rd</sup> Floor, Vardhaman Plaza Pocket 7  
Plot No. 6, Sector 12, Dwarka  
New Delhi -110078

**... Respondent/  
Corporate Debtor**

**Section: 7 of IBC, 2016**

**Order Delivered on: 31.01.2024**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Ankur Mittal, Adv. Yamini Naruka

**For the Respondent** : Sr. Adv. P. Nagesh, Adv. Vipul Wadhwa, Adv.  
Akshay Sharma, Adv. Kashika Gera

## **ORDER**

The captioned petition has been preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by IIFCL Asset Management Company Limited (for brevity, the '**Applicant/ Financial Creditor**') praying therein to initiate the Corporate Insolvency Resolution Process against Mission Holding Private Limited (for brevity, the '**Respondent/ Corporate Debtor/CD**').

2. Stating succinctly, the Respondent viz Mission Holdings Private Limited formerly is a Company incorporated on 27.09.1996 with CIN U67120DL1996PTC082287, in terms of the provisions of the Companies Act, 1956 having its Registered Office at 311, 3<sup>rd</sup> Floor, Vardhaman Plaza Pocket 7, Sector 12, Dwarka New Delhi -110078, and is amenable to the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs. 30,00,000/- and its Paid-up Share Capital is Rs. 12,356/-.

3. It is stated by the Applicant that: -

- I. The Corporate Debtor has committed default and as on 15.04.2023 an amount of Rs. 48,47,51,755/- (Rupees Forty Eight Crore Forty seven Lakh Fifty one Thousand Seven Hundred Fifty Five only) including interest, penal interest and charges is due from by the CD.
- II. The Corporate Debtor secured the facility availed by Feedback Infra Private Limited (**Borrower Company**), in the capacity of Corporate Guarantor, from the Applicant. Accordingly, the liability of the Corporate Debtor herein is joint and several.

- III. The Borrower availed certain loan facilities from different lenders and in order to raise finances for repayment, it proposed to issue 300 listed and secured redeemable Non-Convertible Debentures of face value of Rs. 10,00,000/- (Rupees Ten Lakh only) each for the aggregate value of upto Rs. 30,00,00,000/- (Rupees Thirty Crore only), to the Applicant on 27.11.2017.
- IV. The NCD were sanctioned by the Board of the Applicant on 30.11.2017. On 15.12.2017, one Debenture Trust Deed was executed between Borrower and Debenture Trustee wherein, Vistra ITCL (India) Ltd. was appointed as the Debenture Trustee. Subsequently, an NCO Account was opened by the Borrower with the Escrow Bank i.e. RBL Bank.
- V. A Deed of Hypothecation was executed between Borrower and Debenture Trustee creating Hypothecation of all rights, title, interests and pari passu charge over all the current and movable assets of the Borrower. The Borrower was supposed to pledge 2,00,00,000 shares of its subsidiary i.e., Feedback Highways OMT Private Limited **"FHOMT"**. However, Borrower alongwith one Mr. R.S Ramasubramanium pledged only 80,00,000 shares of FHOMT Pvt. Ltd. The pledge of the rest of shares were never carried out by the Borrower.
- VI. In furtherance, Mission Holdings Private Limited **"MHPL"**, the Corporate Guarantor pledged 3,26,364 equity shares of FIPL, providing a coverage of Rs. 15,00,00,000 (Fifteen Crores only) for the first series of Debentures. In addition, the Corporate Guarantor signed and executed an irrevocable and unconditional Corporate Guarantee in favour of the Debenture Trustee. An irrevocable and unconditional

personal guarantee in favour of the Debenture Trustee was also executed by Mr. Vinayak Chattarjee.

VII. The Financial Creditor on 21.12.2017, in view of this arrangement subscribed to 300 listed, secured, rated, redeemable Non-Convertible Debentures (NCDs) aggregating the total value of Rs. 30,00,00,000/- (Rupees Thirty Crore only). As per the arrangement of Debenture Trust Deed, the NCDs were to be redeemed in 3 instalments of Rs. 10 Cr each on 20.12.2020, 20.12.2021 and 20.12.2022. Pertinently, the Borrower failed to maintain the Debt Service Reserve Account and did not oblige to make any payment of monies against the three redemption of NCDs on 20.12.2020, on 20.12.2021 and on 20.12.2022.

VIII. Pursuant to the fall of the second redemption of the NCDs, a Notice of Default dated 29.12.2021 was issued by the Applicant. The Borrower in its reply dated 23.02.2022 did not provide any satisfactory response and failed to fulfil its financial obligations under the Debenture Trust Deed. The Applicant on 06.09.2022 issued another Notice in response to the reply dated 23.02.2022 addressing Borrower's reluctance to make repayment of the money owned but the Borrower failed to fulfil any financial obligations as part of the repayment.

4. The Applicant has relied upon the following documents to prove the existence of Financial Debt:

- I. Copy of Sanction Letter (Ref:IAMCL:2017-18:FIPL:3016) dated 30.11.2017
- II. Copy of Debenture Trust Deed dated 15.12.2017
- III. Copy of the Escrow Agreement dated 15.12.2017

- IV. Copy Deed of Hypothecation dated 15.12.2017.
  - V. Copy of Share Pledge Agreement dated 15.12.2017
  - VI. Copy of irrevocable and unconditional Deed of Corporate Guarantee dated 15.12.2017
  - VII. Copy of Deed of Personal Guarantee dated 15.12.2017.
  - VIII. Copy of First Amendment Deed to the Debenture Trust Deed dated 02.11.2018
  - IX. Copy of Notice of Default dated 22.12.2020 issued by the Debenture Trustee to the Borrower
  - X. Copy of Notice dated 03.12.2020 and 12.01.2021
  - XI. Copy of the Notice of Default dated 29.12.2021
  - XII. Copy of the record of default by NESL dated 25.05.2023 with default date as 20.12.2021
5. Finally, the Applicant prayed for initiation of CIR Proceedings qua the Corporate Debtor.
6. On issuance of Notice, the Respondent filed its reply and espoused thus:
- 6.1 The Corporate Debtor furnished a Corporate Guarantee in favour of the Security Trustee vide Deed of Corporate Guarantee dated 15.12.2017 (**“Corporate Guarantee”**) (**Annexure A-16** at Pg. 392 of Volume 3 of the Application), to secure the facilities availed by Feedback Infra Private Limited (**“Borrower”**) from IIFCL Asset Management Company Limited (**“Applicant”**). The Applicant issued certain Non-Convertible Debentures for a value of Rs. 30 Crores in favour of the Borrower (**“Debentures”**) and the

Guarantee was furnished by the Corporate Debtor with respect to the said Debentures.

6.2 As is evident from the Sanction Letter dated 18.05.2020 (**Annexure A-7** at Pg. 46 of Volume 1 of the Application), the Debentures issued by the Borrower were to be redeemed in three installments of Rs. 10 Crores each i.e. first installment to be redeemed on 13.12.2020, second installment to be redeemed on 13.12.2021 and third installment to be redeemed on 13.12.2022.

6.3 Subsequently, vide letter dated 13.07.2020, CD submitted a revised proposal and a request was made to change the date of redemption of three instalments from 13.12.2020, 13.12.2021 and 13.12.2022 to 20.12.2020, 20.12.2021 and 20.12.2022. The revision in the dates was duly accepted by the Applicant and it is evident from the Letter of Default dated 29.12.2021 issued to the Borrower (**Annexure A-27** at pg. 497 of Volume 3 of the Application), wherein the date of default(s) are mentioned as 20.12.2020 and 20.12.2021.

6.4 That the Applicant has alleged that the Borrower failed to make the payment of Rs. 10 Crores i.e., the First Installment on the date on which it fell due for payment i.e. on 20.12.2020.

6.5 That thereafter, the Deed of Corporate Guarantee dated 15.12.2017 was invoked by a Letter dated 12.01.2021 ("**Letter**") (**Annexure A-20** at Pg. 487 of Volume 3 of the Application) qua the First instalment only. A perusal of the Letter shows that the Corporate Debtor was directed to make

payment of the default amount within 2(two) days. It is evident that the Corporate Debtor was required to make the payment by 14.01.2021.

6.6 Thus, the alleged default by the Corporate Guarantor, if any, was committed on 14.01.2021 which falls within the period stipulated under Section 10 A of the Insolvency and Bankruptcy Code, 2016.

6.7 Thereafter, the Second Installment of the Debentures fell due on 20.12.2021 as stipulated under the Sanction Letter, the payment of which was allegedly not honoured by the Borrower.

6.8 Subsequently, no letter of invocation was ever issued by Vistra ITCL (India) Ltd. ("**Trustee**") for the due payment towards the Second and the Third Installment of the Debentures.

6.9 A notice of Default dated 29.12.2021 was issued by the Applicant wherein a demand for the payment of the entire value of the Debentures i.e. Rs. 300 Crores was made from the Borrower and the Corporate Debtor herein inter alia.

6.10 The Applicant had no authority to invoke the Corporate Guarantee dated 15.12.2017 since the deed of Corporate Guarantee was executed between the Corporate Debtor and the Trustee i.e. Vistra ITCL (India) Ltd. and thus there exists no privity of contract between the Applicant and the Corporate Debtor. Therefore, the alleged invocation of the Corporate Guarantee vide Notice of Default dated 29.12.2021 by the Applicant was improper and non-est.

6.11 In this regard, reliance is also placed upon Clause 2 and 4 of the Deed of Guarantee wherein it is stated that the Guarantor i.e. the Corporate Debtor herein, shall pay the dues to the Trustee upon the first demand of the Trustee only. The contents of Clause 4 of the deed reads thus: -

*“4. The Guarantor hereby irrevocably and unconditionally undertakes to act upon first demand forthwith by the Debenture Trustee and/or its nominees/agent on its behalf.”*

6.12 The Application is barred by Section 10A of the Code as in terms of the contents of the Application and the documents attached therewith, the alleged default was committed on 20.12.2020.

6.13 It is the submission of the Corporate Debtor that the Applicant has filed a common petition for the defaults covered by the period mentioned in Section 10A of the Code and the defaults which were committed during the period not covered by Section 10A of the Code and for this reason, the present Petition is not maintainable and is hit by the embargo created by Section 10A.

6.14 It is the case of the Respondent that a default committed during the period covered by the default Section 10A of the Code cannot be clubbed with the defaults committed beyond the period mentioned in Section 10A of the Code. In this regard, reliance is placed upon the judgment passed by the Hon'ble NCLAT in **Plus Corporate Ventures Pvt. Ltd. v. Transactional Growth Fund Ltd.** [Company Appeal (AT) (Insolvency) No. 1270 of 2022], vide which it was held that a cumulative application, taking all the amounts, cannot be filed, as doing so would be contrary to the statutory scheme delineated by Section 10A of the Code.

7. The Applicant filed Written Submissions espousing therein:

7.1 The second tranche falling due on 20.12.2021, was not paid and therefore, the default occurred. The said date of default is outside the purview of Section 10A of IBC, 2016.

7.2 In '**Nitin Chandrakant Desai vs Edelweiss Asset Reconstruction Ltd. & Anr.**' (Comp Appeal (AT)(Ins) No. 1022 of 2023) decided on 01.08.2023, Hon'ble NCLAT ruled that Application can be filed for default committed prior to the period covered by Section 10A of IBC, 2016.

7.3 Further in **Mr. Zubin Bharucha vs. Reliance AIF Management Company Ltd.** (Company Appeal (AT) (Ins) No. 504 of 2021), Hon'ble NCLAT ruled thus:

*"23. At the outset we note the Rule 18(1)(c) of the Companies (Share Capital and Debentured) Rules, 2014, which is as follows: -*

*"18 (1) The company shall not issue secured debentures, unless it complies with the following conditions, namely:-*

*x x x*

*(c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders; and"*

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*58. Further, the issue whether the Debenture Holder can claim repayment with regard to the amount mentioned in the demand certificate as a Financial Debt is squarely answered in Clause 4 of the Deed of Irrevocable and Unconditional Guarantee of which B & M Infra and Vistra ITCL are co-signees since demand certificate has been issued by the Debenture Trustee on 14.05.2019, a conjoint reading of the Debenture Trust Deed of Guarantee clearly*

*establishes that the amount claimed in demand certificate is to be paid directly to the Debenture Holders by Respondent No. 3, who is the Corporate Debtor within the provisions of IBC.”*

7.4 In paras 3.12 (c) and para 9.2 (a) (ii) of the Debenture Trust Deed it is stated:

*“(c) The Company covenants with the Debenture Trustee that it shall pay to the Debenture Holders, the Unpaid Principal Amounts of the Debentures, on the Principal Repayment Dates and shall also pay the Coupon on the Coupon Payment Dates, the Default Interest (if applicable) and all other Debenture Payments payable on the Debentures as stipulated and in accordance with the Financial Conditions and terms of this Deed. The Company shall deposit all Debenture Payments due by the Company in terms of the Transaction Documents into the NCD Account (in terms of Clause 3.14 below) and such payments when due and payable shall be released by the Debenture Trustee to the Debenture Holders in proportion to their dues.”*

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*“(ii) exercise any other right that the Debenture Trustee and/or Debenture Holders may have under the Transaction Documents or under Law;”*

Therefore, the Debenture Holder can also claim for the debt due from the Borrower and its guarantors.

7.5 In default notice dated 29.12.2021 the Corporate Guarantor/ Respondent herein was categorically marked and in clause 5 of the said notice it is clearly mentioned by the Financial Creditor that the issuer Company failed to make the payment of principal amount and other monies.

8. We have heard the submissions of both the parties and have perused the documents available on record. The applicant is claiming to be a Financial Creditor in the capacity of a Debenture holder, in whose favor a Corporate Guarantee Deed has been executed by the Respondent to secure the debt of the principal borrower.

9. Though the Respondent has not disputed the execution of the guarantee deed, however, it has objected that the Applicant could not have invoked the Guarantee and it is only the Debenture Trustee who can file the present application on behalf of the Debenture Holder. We would like to examine this contention raised by the Respondent.

10. The aforesaid proposition has already been set at rest by Hon'ble NCLAT Chennai in the matter of **Mr. T Prabakar vs. Mr S Krishnan IRP of Green Valleys Shelters (P) Ltd** (Company Appeal (AT)(CH)(Ins) No.217/2021). The relevant excerpts of the Judgement read thus:

*“48. It cannot be gainsaid that the ‘Debenture Holders’ even in the absence of ‘Debenture Trustees’ is entitled to file an ‘Application’ under the I&B Code seeking necessary relief. In short, the right of the 2nd and 3rd Respondent is very much saved in the ‘Debenture Trust Deed’. It is to be remembered that in the present case the Section 7 Application under the Code was filed by the 100% ‘Debenture Holders’ and they are the ‘Financial Creditors’ under the I&B Code. As such, this ‘Tribunal’ holds that they do have a valid and legal right to file the Section 7 Application under the I&B Code, 2016.”*

11. Similarly, this Tribunal (Mumbai Bench) in the matter of **Reliance AIF Management Company Limited & Anr. vs. Bharucha & Motivala Infrastructure Private Limited** [(2021) ibclaw.in 207 NCLT] has held thus:

*“25.1 ...the Corporate Debtor had contended that the Petitioners are only holders of the NCDs and are not parties to the debenture trust deed and therefore the debenture holders do not have any locus to file the present Petition as only debenture trustee can file the present Petition. The Bench finds this argument taken by the Corporate Debtor to be untenable as it is a fact that the Debenture Trustee is for the convenience of the Debenture Holders and their benefit. It is for this reason that the Debenture Trustee is only an agent of the Debenture Holders. The presence of a Trustee in no way limits or erases any right of the debenture holders under any circumstances”.*

12. In view of the aforesaid decision of Hon'ble NCLAT we find no force in the argument raised by the Respondent that the application can only be filed by the Debenture Trustee and not the Debenture Holder.

13. Another objection raised by the Respondent is that the present Application is barred by Section 10A of IBC, 2016 as the default has occurred during the suspension period during which no application can ever be filed to initiate CIR Process. Respondent further contended that the Hon'ble NCLAT in the **Plus Corporate Ventures Pvt. Ltd. vs. Transactional Growth Fund Ltd.** [Company Appeal (AT) (Insolvency) No. 1270 of 2022], has held that cumulative application, taking all the amounts, falling within and outside Section 10A period cannot be filed. Per Contra the Applicant had the second tranche fell due for payment only on 20.12.2021, which was not paid and therefore, the default occurred. The said period is outside the Section 10A of IBC, 2016. The Applicant further relied upon the Judgement of Hon'ble NCLAT in **Nitin Chandrakant Desai vs. Edelweiss Asset Reconstruction Company Limited & Anr.** (Company Appeal (AT) (Insolvency) No. 1022 of 2023) dated 01.08.2023.

14. From perusal of the record it is observed that the Applicant has sent notices of default dated 22.12.2020 and 29.12.2021. The Applicant in its Written Submissions had clarified the intent behind two default notices. According to him, different default notice for each of the tranches, were issued as the first part of tranche fell due on 20.12.2020, Accordingly, the default notice was issued on 22.12.2020 whereby Applicant had called upon the Respondent to deposit Rs. 1,91,25,000/- forthwith. The Second tranche fell due on 20.12.2021 and thereafter, on 29.12.2021, the Notice of Default was issued and the Applicant recalled entire debt due amounting to Rs. 30 Cr along with interest at the rate of 16.25% per annum.

15. The default with respect to First Tranche as per the own submission of the Applicant had occurred on 20.12.2020, which undisputedly falls under Section 10A period. Further from perusal of Part IV of the Application the Applicant had claimed interest for the period covered by Section 10A of IBC, 2016. However, the default with respect to second tranche occurred on 29.12.2021, which is not covered by the period mentioned in Section 10A of IBC, 2016. The Redemption amount of the second tranche was Rs. 10 Crores for which default has been admitted by the Respondent, however it had contended that CIR Process cannot be triggered for such default as the Applicant had clubbed the default falling under Section 10A period with the second tranche which is not permissible.

16. In the aforesaid facts, the propositions arise to be determined by us is whether claim arising out of default committed during the Section 10A period can be clubbed with the claim default qua which occurred during the period not covered by Section 10A of IBC, 2016.

17. In wake of proposition (ibid) we would like delve into the Judgement of Hon'ble NCLAT relied by the Respondent viz. **Plus Corporate Ventures Pvt. Ltd. v. Transactional Growth Fund Ltd.** [Company Appeal (AT) (Insolvency) No. 1270 of 2022], the relevant excerpts of which reads thus:

**“2.** *This Appeal has been filed against the Order dated 17<sup>th</sup> August, 2022 passed by the National Company Law Tribunal, New Delhi, Bench-IV. By which Order, the **Adjudicating Authority has rejected the Application being Company Petition No. (IB)-297(ND)/2022 under Section 9** filed under the Insolvency and Bankruptcy Code, 2016 by the Appellant as barred by Section 10-A of the Code.*

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**7.** *When we look into the proviso to Section 10A, the expression is “provided that no Application shall ever be filed for initiation of CIRP of a Corporate Debtor for the said default occurring during the said period” thus default which has been committed from 16.09.2020 to 28.02.2021, no Application could have ever been filed. **The Appellant’s submission that cumulatively application can be filed taking all amounts, cannot be accepted. The said submission goes contrary to the statutory scheme delineated by Section 10A proviso as noted above. When Appellant could not have filed the Application for the default which was committed, the Adjudicating Authority did not commit any error in rejecting the Application as barred by Section 10A of the Code. In so far as the last two default on 31<sup>st</sup> March, 2021 and 30<sup>th</sup> April, 2021 is concerned, the Adjudicating Authority has noticed that the total amount of the aforesaid two defaults is only Rs. 37,50,000/- which is below the threshold as provided under Section 4 of the Code.***

**(Emphasis added)”**

18. From perusal of the above Judgement (ibid) the default amount for the period subsequent to Section 10A period was less than the threshold limit therefore, in facts of that particular case it was held that the Application is barred by Section 4 of IBC, 2016. In the said case the Application was preferred under Section 9 of IBC, 2016, where the Application qua such amount which is not mentioned in demand notice may not be maintainable. The notice under Section 8(1) of IBC, 2016 is not the requirement to be satisfied before filing the Application under Section 7 of IBC, 2016. In the instant case the default which has occurred after Section 10A period is above the threshold amount. Therefore, the aforesaid Judgement (ibid) will not help the cause of the CD. In **Collector of Central Excise, Calcutta vs. M/s Alnoori Tobacco Products & Anr.**, [Civil Appeal Nos. 4502-4503 of 1998], decided on 21.07.2004, Hon'ble Supreme Court ruled that court should not place reliance on decisions without discussing as to how the factual situation fits in with the factual situation of the decision on which reliance is placed. The relevant excerpts of the Judgement read thus: -

*“11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words*

are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (1951 AC 737 at p.761), Lord Mac Dermot observed:

*“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.”*

**12.** In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, “Lord Atkin's speech ...is not to be treated as if it was a statute definition. It will require qualification in new circumstances”. Megarry, J. in *Shepherd Homes Ltd. v. Sandham* observed: “One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament.” And, in *British Railways Board v. Herrington* (Lord Morris said:

*“There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.”*

**13.** *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

**14.** *The following words of Lord Denning in the matter of applying precedents have become locus classicus:*

*“19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide*

*therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”*

\* \* \*

*“Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”*

**15.** *In view of the undisputed position that the CEGAT did not consider the relevant aspects and proceeded to decide the appeals on merits without examining the propriety of dismissal of appeals by the Collector (Appeals) for non-compliance with the requirements of Section 35-F of the Act, the impugned judgments are unsustainable and are set aside. We remit the matter back to the CEGAT for adjudication afresh in accordance with law. The appeals are accordingly disposed of with no order as to costs.”*

19. If we ignore the amount of default falling within Section 10A period the default occurred in the instant case it still above the threshold limit, for which the Application under Section 7 still survives. What all this Adjudicating Authority is required to see is whether there is a debt due and default has occurred. However, while adjudicating the default, the Adjudicating Authority need not to indulge in determining the extent or details of debt. The moment it is satisfied that the unpaid amount of default is above Rs 1 Crore, it is bound to admit the application. In the context, we refer to the law laid down by the Hon’ble Supreme Court in the matter of “**M/s Innoventive Industries Ltd. Vs. ICICI Bank and Anr.** [Civil Appeal Nos. 8337-8338 of 2017]” wherein it is held thus:

*“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the*

*insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. **The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor....***

28. *... **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete**, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.*

**(Emphasis supplied)”**

20. In view of the above the Applicant has been able to establish default above the threshold limit, which had occurred beyond the period covered by Section 10A of IBC, 2016. The petition cannot be held barred by Section 10A of IBC, 2016.

21. In view of the above discussion the debt and default has been established by the Applicant. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC**

**and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent including 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

22. As proposed by the Applicant, this Bench appoints Mr. Kapil Dev Taneja as IRP having Registration IBBI/IPA-003/IP-N00069/2017-18/10547 Email ID: kapildtaneja@gmail.com, subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

“Mr. Kapil Dev Taneja, as an IRP having Registration No. IBBI/IPA-003/IP-N00069/2017-18/10547, Email ID: kapildtaneja@gmail.com

is directed to take charge of the CIRP of the Respondent with immediate

effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.”

23. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

24. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, the IRP named above, and the Information Utility/NeSL by the Court Officer/Registry of this Tribunal.

25. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to IBBI for their records.

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**