IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III

C.P.(IB)-597(MB)/C-III/2024

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

State Bank of India

Having its Corporate Office at:

State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai - 400021

Branch Office:

Stressed Asset Resolution Group - Commercial Branch 112/115, 1st Floor, West Wing, Tulsiani Chambers, Free Press Journal Marg, Nariman Point, Mumbai – 400021

... Financial Creditor

Vs.

KM Toll Road Private Limited

Reliance Centre, 19, Walchand Hirachand Marg, Ballard Estate, Mumbai – 400001

CIN: U45203MH2010PTC199705

... Corporate Debtor

Order pronounced on: 22.07.2026

Coram:

Sh. Hariharan Neelakanta Iyer	Ms. Lakshmi Gurung
Member *(Technical)*	Member *(Judicial)*

Appearances:

For the Financial Creditor : Sr. Adv. Pradeep Sancheti, Adv. Shriraj Khambete a/w Adv. Rounak Doshi

For the Corporate Debtor : Adv. Rohit Gupta a/w Adv. Ayaan Zariwalla a/w Ms. Bhakti Chandan i/b Mulla & Mulla and Craigie Blunt & Caroe

Per: Sh. Hariharan Neelakanta Iyer, Member (*Technical*)

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) by the State Bank of India (**Financial Creditor/Petitioner**) for initiating Corporate Insolvency Resolution Process (**CIRP**) against M/s. KM Toll Road Private Limited (**Corporate Debtor/Respondent**) for alleged default in repayment of **Rs. 122,12,84,985/-** (Rupees One Hundred Twenty-Two Crores Twelve Lakhs Eight-Four Thousand Nine Hundred Eighty-Five only) excluding the accrued and penal interest.

2. **Facts and submissions as emerging from the Petition**

2.1 The National Highways Authority of India (**NHAI**) selected Reliance Infrastructure Limited ('**RIL**') for implementation of a highway project and accordingly issued the letter of Acceptance dated 12.01.2010. Pursuant thereto, the Corporate Debtor was incorporated by RIL on 04.02.2010 as a special purpose vehicle (SPV).

2.2 The Corporate Debtor entered into a Concession Agreement dated 10.03.2010 for implementing the highway project for a period of 25 years by way of an exclusive right, license and authority set out in the said agreement. The estimated cost of the project was Rs. 789 crores.

2.3 A Common Loan Agreement dated 25.01.2011 was executed between the Corporate Debtor and its lenders as per which the following lenders disbursed the requisite finance in the following proportion:

Name of the Lender	Amount of Loan (Rs. In Crores)
State Bank of Hyderabad	85

State Bank of Bikaner and Jaipur	85
Yes Bank Limited	109
Andhra Bank	125
Bank of Maharashtra	85
Corporation Bank	165
Karnataka Bank	50
Punjab & Sind Bank	85
Total	**789**

2.4 Subsequently, the following documents were executed:

i. Lenders' Agent Agreement dated 25.01.2011 executed by and between the lenders of the Corporate Debtor and Yes Bank Limited whereby it was agreed that Yes Bank was to act on behalf of all the lenders.

ii. Security Trustee Agreement dated 25.01.2011 whereby the lenders appointed Axis Trustee Services Limited as the Security Trustee to the lenders.

iii. Inter Creditor Agreement dated 25.01.2011 outlining the rights of the lenders.

iv. Escrow Agreement.

v. Substitution Agreement for securing the interest through assignment, transfer, and substitution of a concession to a nominated company.

vi. Indenture of Mortgage dated 24.08.2012.

2.5 It is submitted that under the Common Loan Agreement, the Corporate Debtor was entitled to approach a bank or a financial institution or any agency of foreign currency loans to obtain additional finance to the extent of 50% of the credit facility under the Common Loan Agreement. Accordingly, the Corporate Debtor availed finance from Deutsche Investitions Und Estwickungsgesellshaft Mbh of USD 24.5 million (Rs. 151.84 crores). In view thereof, the lenders revised their financial assistance to a sum not exceeding Rs. 667.75 crores. The revised break up of loan facilities is as follows:

Name of the Lender	Amount of Loan (Rs. In Crores)
State Bank of Hyderabad	71
State Bank of Bikaner and Jaipur	85
Yes Bank Limited	33.75
Andhra Bank	125
Bank of Maharashtra	85
Corporation Bank	139
Karnataka Bank	42
Punjab & Sind Bank	85
Total (A)	**665.75**
Deutsche Investitions Und Entwickungsgesellshaft Mbh (B)	151.84
Total (A+B)	**817.59**

2.6 Subsequently, the lenders executed documents outlining the terms and conditions governing the position of the lenders *inter se.* A Supplemental Indenture of Mortgage dated 16.01.2024 was also executed between the Corporate Debtor and lenders to further secure the consortium loans.

2.7 It is submitted that due to the delay in the implementation of the project, the Corporate Debtor approached the State Bank of Hyderabad and State Bank of Bikaner and Jaipur vide letter dated 21.01.2015 seeking a restructuring and extension of time in repayment of the term loans. It is further submitted that the Corporate Debtor also requested an increase in the estimated project cost from Rs. 1128 crores to Rs. 1215.80 crores and for conversion of a part of the undisbursed term loan limits into letters of credit.

2.8 The State Bank of Hyderabad issued sanction letter dated 30.03.2015 and approved the modification of the existing terms and conditions. In the furtherance thereof, the lenders executed an Amendment Agreement dated 19.05.2015 to the Common Loan Agreement. It is submitted that as per the said Amendment Agreement, the Corporate Debtor was to pay the instalments starting from 15.12.2016.

2.9 On 28.11.2016, a Drawdown Disbursement Certificate bearing Ref. No. MKPS/MUM/NK/306/2016-17 was issued wherein the Chartered Accountant has categorically certified that the Corporate Debtor has availed Rs. 1133.12 crores out of which Rs. 998.98 crores was obtained by way of term loans and other borrowed funds which includes the amounts extended by State Bank of Hyderabad and State Bank of Bikaner and Jaipur.

2.10 It is stated that the Corporate Debtor failed to comply with the repayment schedule under the Amended Agreement dated 19.05.2015.

2.11 On 11.01.2017, the Corporate Debtor issued a Notice of Drawal wherein the Corporate Debtor by referring to the original as well as the amended loan agreements had sought disbursal of Rs. 18.31 crores. In the said notice dated 11.01.2017, the Corporate Debtor had acknowledged the outstanding balance of Rs. 694.55 out of which Rs. 133.42 crores was acknowledged to be outstanding towards the State Bank of Hyderabad and State Bank of Bikaner and Jaipur.

2.12 On 27.02.2017, the consortium lenders sanctioned the disbursement sought by the Corporate Debtor vide letter dated 11.01.2017.

2.13 Meanwhile, vide Gazette Notification No. GSR 157 (E) dated 22.02.2017, the State Bank of Hyderabad and the State Bank of Bikaner and Jaipur were acquired by the State Bank of India (**Petitioner** herein) with effect from 01.04.2017. Consequently, the Petitioner came to be vested with the rights of State Bank of Hyderabad and the State Bank of Bikaner and Jaipur under the Common Loan Agreement dated 25.01.2011 and all the connected agreements thereto.

2.14 It is submitted that the Corporate Debtor had issued letter dated 13.09.2017 whereby the Corporate Debtor has acknowledged the liability towards the term loan facilities availed from the consortium of lenders which also includes the Petitioner herein.

2.15 Thereafter, vide letter dated 31.01.2018, the Corporate Debtor sought yet another disbursement of Rs. 2.46 crores from the consortium. Thereafter, the Corporate Debtor defaulted and the account of the Corporate Debtor was classified as Non-Performing Asset on 15.03.2019 (with retrospective effect from 28.02.2017). Pursuant thereto, the Petitioner issued a Recall Notice dated 28.06.2019.

2.16 On 16.09.2020, the Corporate Debtor made a part payment of Rs. 36,70,58,713 which was received by the Petitioner from its parent company, Reliance Infrastructure Limited/ RIL.

2.17 Subsequently, the Petitioner submitted the financial details of default in Form C to NeSL. The NeSL on 28.02.2021, 04.03.2021, 08.03.2021 and 12.03.2021 issued reminders to the Corporate Debtor seeking confirmation of information of default and since, the Corporate Debtor did not respond to the aforesaid reminders, the NeSL recorded the default as 'deemed to be authenticated'.

2.18 It is submitted that the Corporate Debtor has acknowledged the debt in the balance sheets for the financial years 2019-20, 2020-21, 2021-22 and 2022-23. Further, on 16.01.2024, the Corporate Debtor has also offered One Time Settlement (OTS) Proposal of Rs. 80 crores against the acknowledged debt of Rs. 432.94 crores.

2.19 The Present Petition has been filed on 16.02.2024.

3. **<u>Reply by Corporate Debtor</u>**

The Corporate Debtor filed its reply dated 03.01.2025 and has, *inter alia,* submitted the following:

3.1 ***Petition is filed beyond the prescribed period of limitation***

a) It is submitted that Part IV of the Petition mentions the date of default as 01.12.2016. Further, the Record of Default issued by NeSL also reflects the date of default as 01.12.2016. The Petition, however, is filed on 16.02.2024 i.e. after a period of more than 7 (seven) years. The reliance placed by the Financial Creditor upon the revival letters dated 02.01.2017 and 13.09.2017 cannot come to the assistance of the Financial Creditor as even then the limitation period of three years comes to an end in 13.09.2020, and the Petition was filed on 16.02.2024, i.e., after a period of nearly four years.

3.2 ***Petition is filed against a solvent company***

a) It is submitted that the estimated cost of the highway project was evaluated at Rs. 1128 crore and the same was agreed to be funded upon in a debt-to-equity ratio of 70:30 by the consortium of lenders and the Corporate Debtor's Promoter Company, RIL. The promoter company of the Corporate Debtor agreed to infuse a sum of Rs. 339 crores while the consortium funded the Project to the tune of Rs. 789 crores. Under the Concession Agreement executed between the Corporate Debtor and NHAI, the Corporate Debtor was entitled to operate and maintain the Project and toll plazas for a period of 25 years from the appointed date i.e. 19.01.2011. Thus, the concession period was upto 18.01.2036.

b) During the execution of the Project, the Corporate Debtor faced several difficulties at the project site as a result of whihc, disputes arose between the Corporate Debtor and NHAI which ultimately constrained the Corporate Debtor to issue a termination notice dated 07.05.2019 to NHAI and the Corporate Debtor *inter-alia* demanded a sum of Rs. 1205.47 crores towards termination payment.

c) Subsequently, NHAI also issued a termination notice dated 25.07.2019 to the Corporate Debtor and has made a termination payment, as per its own computation, for a sum of Rs. 181.21 crores which was entirely utilized towards repayment to the lenders.

d) Aggrieved by the action on the part of NHAI in wrongfully terminating the CA on 25.07.2019 (i.e. after the Corporate Debtor's termination on 05.07.2019), the Corporate Debtor invoked arbitration against NHAI on 25.12.2020 for its various claims which *inter-alia* includes termination payment, refunds, compensation and certain costs. Overall, in the arbitration proceedings, the Corporate Debtor has claimed an amount of approximately Rs. 2096 crore from NHAI. NHAI has not filed any counter-claim and is only claiming a set-off for a sum of Rs. 128 crores.

e) It is submitted that the Petitioner has sought insolvency process against a solvent company which is currently undergoing a temporary financial stress as it awaits receipt of huge amounts of monies from NHAI under the arbitration proceedings which are currently at the final stages of completion.

f) It is further submitted that the amounts claimed by the Corporate Debtor in the arbitration proceedings are far in excess of the entire outstanding dues of the consortium of lenders. Thus, keeping in mind the object and purpose of the Code which is the resolution of the corporate debtor and not the recovery of debt, sufficient time may be granted to the Corporate Debtor to pursue its claims before the Arbitral Tribunal. It is submitted that as and when the amounts are received by the Corporate Debtor, the same shall be utilized towards the payment of the lenders' dues in priority of their charge in terms of the escrow mechanism.

3.3 ***Section 7 (5) (a) of the Code is discretionary***

a) It is submitted that section 7(5)(a) of the Code provides that where the Adjudicating Authority is satisfied that the essential ingredients under section 7 of the Code are met, it ***'may'*** by order, admit such application. The word ***'may'*** used in Section 7(5)(a) of the Code is to confer discretionary power on the Adjudicating Authority to either admit or reject the Petition or to keep it in abeyance.

b) It is further submitted that Rule 11 of the National Company Law Tribunal Rules, 2016 (**NCLT Rules**) also gives inherent powers to the Tribunal. Thus, the language used in section 7(5)(a) of the Code read with Rule 11 of the NCLT Rules would make it clear that it is not mandatory upon the Tribunal to admit section 7 petition.

c) It is submitted that the facts of the present case are squarely covered by the judgment of ***Vidarbha Industries Power Limited vs. Axis Bank Limited [2022 SCC Online SC 841]*** wherein the Hon'ble Supreme Court exercised its discretionary power under section 7(5)(a) of the Code and dismissed a section 7 petition.

3.4 ***Petition is filed contrary to the terms of financing documents***

a) It is submitted that the Petitioner herein is one of the members of the consortium of lenders and is a part of the Inter-Creditor Agreement (**ICA**) dated 25.01.2011 entered into between the consortium lenders. As per clause 5 of the ICA, any action pursuant to any alleged default has to be taken by the lenders collectively and not individually. Thus, the Financial Creditor by virtue of filing the present Petition has violated the terms and conditions agreed upon under the ICA.

3.5 ***Substantial amounts paid and OTS Proposal under consideration***

a) It is submitted that the Corporate Debtor has regularly serviced its debt obligations in a timely manner for a period of 7 years from 2011 till the date of declaration of account as NPA by the Financial Creditor on 15.03.2019 (w.e.f. 28.02.2017). However, even after the declaration of the account of Corporate Debtor as NPA, the Corporate Debtor has continued to repay its dues and as on 31.12.2024, the Corporate Debtor has paid Rs. 719 crores to the consortium of lenders.

b) It is submitted that owing to the factors beyond the control of the Corporate Debtor, the Corporate Debtor is facing a temporary financial stress and has also not received cash flows from the Project to cater to its financial sustainability and has incurred losses due to NHAI's various breaches of the CA including its illegal termination. However, the Corporate Debtor is undertaking all possible measures for repayment of its debt servicing obligations which demonstrates the *bona fide* of the Corporate Debtor.

c) It is further submitted that the Corporate Debtor had issued a One-Time Settlement (‘**OTS**’) Proposal to the consortium of lenders vide its letter dated 16.01.2024 and continues to be engaged in further discussions with the Lenders to resolve the issue amicably.

3.6 ***Present Petition is contrary to Preamble of the Code***

a) It is submitted that the preamble to the Code envisages that the object of the Code is to balance the interest of all the stakeholders of the Corporate Debtor. The present Petition, if admitted, will compromise and prejudice the interests of the other lenders and stakeholders of the Corporate Debtor and thus, it will defeat the purpose of the Code.

b) It is submitted that object of the Code is not to penalize solvent companies, thus, the Petition is liable to be dismissed. However, even if this Tribunal is not inclined to dismiss the Petition, in the alternative, it is prayed that this Petition may be kept in abeyance until the arbitration proceedings are concluded and Award is passed.

4. **Affidavit dated 25.03.2025 by Corporate Debtor**

The Corporate Debtor has filed Affidavit dated 25.03.2025 and *inter alia* submitted the following:

4.1 It is submitted that the Corporate Debtor sent a letter dated 23.01.2025 to the consortium of lenders with a request to consider the OTS Proposal made by the Corporate Debtor at the earliest to enable the parties to consummate the OTS transaction by 31.03.2025.

4.2 Subsequently, the Corporate Debtor received an email dated 18.02.2025 from the lead lender i.e. Union Bank of India informing about the steps taken by the banks in pursuance of the OTS Proposal dated 16.01.2024 and it was informed that a Joint Lenders Meeting (**JLM**) was conducted by the Lenders on 22.02.2024 wherein it was decided to appoint two valuers viz. M/s. Kakode Associates and M/s. Resolute Valuers & Consultants Pvt. Ltd. to conduct valuation of the ongoing arbitration proceedings and the Corporate Debtor was called upon to provide relevant documents.

4.3 The Corporate Debtor by its email dated 24.03.2025 informed the Lenders that requisite documents have been collated and requested for a joint meeting / discussion with the appointed valuer to understand additional requirements, if any. It is submitted that further discussions with the lenders in this regard are underway.

4.4 The Corporate Debtor refers to the case of a group entity viz. T. K. Toll Road Private Limited (**TKTR**) which had initiated arbitration proceedings against NHAI for a sum of Rs. 1056 crores and obtained an Arbitral Award dated 01.10.2022 in its favour. Accordingly, a company petition filed by Canara Bank under Section 7 of the Code on 12.12.2022 came to be withdrawn on 16.02.2024.

4.5 It is submitted that in the present case, the arbitration proceedings is at advanced stage and are likely to be concluded within an estimated span of 3-4 months.

4.6 It is further submitted that the lenders can initiate such action to undertake a valuation of the Award and take such other steps including an auction of the arbitration on such terms and conditions as mutually acceptable (‘**Proposal**’). It is submitted that the said Proposal be viewed from the lens of resolution and a reasonable opportunity may be provided to the Corporate Debtor so that the Proposal set out herein above can be pursued jointly with the Lenders in a bid to facilitate an amicable resolution of the matter.

4.7 Without prejudice, it is submitted that since the Concession Agreement has already been terminated, there are no ongoing operations or associated cash inflows related to the Project and therefore, no purpose would be served by admitting the Corporate Debtor to CIRP and the OTS process would also be undermined. It is further submitted that the only source of funds for the Corporate Debtor is the anticipated receivables from NHAI under the arbitration proceedings, thus, even if CIRP is initiated, the value of the Corporate Debtor will only constitute of its claims in the arbitration proceedings.

Analysis & Findings

5. Heard the Ld. Counsel for parties and perused the records.

6. The Petitioner is a part of the consortium of lenders which had extended term loan facilities to the Corporate Debtor for a highway project. The present petition has been filed under section 7 of the Code seeking initiation of CIRP in respect of the Corporate Debtor due to alleged default by the Corporate Debtor in repaying the term loan.

7. The Corporate Debtor has filed its reply and objected the Petition on various grounds. Before delving into the grounds of objection, we deem it appropriate to first ascertain the debt and default which are essential ingredients for the purpose of section 7 of the Code.

Debt and Default

8. The Petitioner has submitted that the Corporate Debtor had availed term loan of Rs. 789 crores approximately from the consortium of banks which includes the Petitioner (earlier 'State Bank of Hyderabad' and 'State Bank of Bikaner and Jaipur'). A Common Loan Agreement dated 25.01.2011 followed by other documents were executed by the Corporate Debtor and the lenders.

9. From the reply of the Corporate Debtor, it is seen that the Corporate Debtor has neither denied the loan obtained from the Petitioner and other lenders nor has disputed the execution of various documents in this regard.

10. In fact, we note that the Corporate Debtor in its reply has submitted that the amounts could not be repaid since the Corporate Debtor has been facing temporary financial crunch. The Corporate Debtor has admittedly also been discussing OTS proposals with the lenders to discharge its liability. Thus, Corporate Debtor has obtained loan from the consortium of lenders including the Petitioner and defaulted in repayment which has become due and payable.

11. The Petitioner has also placed on record the 'Record of Default – Form D' issued by NeSL. As per the said Report, the authentication was completed on 17.03.2021 and the status of authentication is 'DEEMED TO BE AUTHENTICATED'. The Hon'ble NCLAT in **Gp. Capt Atul Jain (Retd.) vs. Tripathi Hospital Pvt. Ltd. [Company Appeal (AT) (Ins) No. 655/2020**, *decided on 27.07.2023*, observed that *"under the statutory scheme of IBC, record of information utility which falls in the category of "deemed to be authenticated" even if not sacrosanct but still is relevant to establish default in terms of Section 3(12) of the IBC."*

12. Further, the Petitioner has also annexed the Certificate under section 2 of the Banker's Book Evidence Act, 1891 to show record of debt and default of the Corporate Debtor.

13. As per section 7(3) of the Code, the financial creditor is required to furnish record of default recorded with the information utility or such other record or evidence of default as may be specified. Regulation 2A was inserted to the CIRP Regulations w.e.f. 13.11.2020 which is reproduced below:

> *"**2A. Record or evidence of default by financial creditor.***
> *For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely: -*

(a) ***certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891)****;*

(b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired."

14. In the present case, the petitioner has furnished the Record of default issued by NeSL (information utility) and also placed on record the certified copy of entries in the account accompanied by the Certificate under section 2 of the Bankers' Books Evidence Act. Thus, the requirement under section 7(3) of the Code read with Regulation 2A of the CIRP Regulations to evidence default is fulfilled.

15. In view thereof and also considering the Corporate Debtor's own admission on the debt and its position to unable to repay, we are satisfied that 'debt' and 'default' have been established.

16. However, despite the admitted debt and default, the Corporate Debtor has raised following grounds to dismiss the Petition:

    i. Petition is barred by Limitation.
    ii. The Petitioner being a part of the various financing documents executed by the consortium of lenders has breached the terms therein by resorting to initiating insolvency proceedings against the Corporate Debtor without a collective decision from the consortium of lenders.
    iii. Erroneous determination of date of default.
    iv. Corporate Debtor is a solvent company and no case for insolvency is made out.
    v. There have been substantial repayments and subsequent OTS proposal by the Corporate Debtor which is currently under consideration by the lenders.
    vi. The Petition is contrary to the object of the Code and this is a fit case for the Tribunal to exercise its discretion to reject the Petition.

Limitation

17. It is noticed that the Corporate Debtor had issued a Revival Letters dated 02.01.2017 and 13.09.2017 acknowledging the loan obtained from the lenders for the purpose of limitation. The relevant extract of the said letters is reproduced below:

> *"We do hereby confirm that all the Financing Documents and Security Documents executed by us in favour of the Lenders under the said consortium in respect of Term Loan facilities are subsisting, valid, continuing, binding, and effective and are fully enforceable against us.*
> *We do hereby acknowledge for the purposes of Section 18 of the Indian Limitation Act 1963 and in order to preclude any question being raised on limitation regarding our liability to the lenders for the payment of the outstanding amounts in respect of the present as well as the future indebtedness and liabilities under the said Financing Documents together with interest, compound interest, additional interest, liquidated damages, cost charges, expenses and other charges payable in terms of the said Financing Documents and confirm that our liability shall remain in full force with all relative securities, arrangement and obligations as mentioned therein."*

18. The aforesaid acknowledging which was made before the expiry of 3 (three) years from the date of default i.e. 01.12.2016 would extend the limitation. Accordingly, the revised limitation period calculating from 13.09.2017 would be 13.09.2020.

19. We note that in the meantime, a recall notice dated 28.06.2019 was sent by the Petitioner calling upon the Corporate Debtor to pay the outstanding dues. The Corporate Debtor sent reply dated 13.07.2019 and requested the Petitioner to withdraw the recall notice by explaining that the debt payment would happen from the termination payment to be received from NHAI. Subsequently, after receiving the termination payment, the Corporate Debtor admittedly made a part payment of Rs. 36,70,58,713 to the Petitioner on 16.09.2020.

20. The Hon'ble NCLAT in **Jayprakash Vyas vs. Prabhat Steel Traders Pvt. Ltd. & Anr [Company Appeal (AT) (Ins) No. 1238 of 2019],** decided on 24.07.2020, has held that *"when part payment is made before the expiration of the prescribed period of limitation by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made."*

21. The Petitioner has also placed on record the financial statements of the Corporate Debtor for the financial years from 2019-2020 to 2022-23 perusal of which shows that the Corporate Debtor has been acknowledging the debt from time to time.

Financial Year 2019-20

Note 9 (a) – Borrowings – Non current
3) The company has delayed in the payment dues to the Banks & financial Institution. The lender wise details is as below:

Name of Lenders	***Principal Amount Rs Millions***	***xxx***	***Interest Amount Rs Millions***	***xxx***
xxx				
State bank of India	*213.29*	*xxx*	*144.07*	*xxx*
xxx				
Total	***1070.33***	***xxx***	***679.87***	***xxx***

Financial Year 2020-21

Note 9 (a) – Borrowings – Non current
3) The company has delayed in the payment dues to the Banks & financial Institution. The lender wise details is as below:

Name of Lenders	***Principal Amount Rs Millions***	***xxx***	***Interest Amount Rs Millions***	***xxx***
xxx				
State bank of India	*58.48*	*xxx*	*265.44*	*xxx*
xxx				
Total	***303.71***	***xxx***	***1294.80***	***xxx***

Financial Year 2021-22

Note 9 (a) – Borrowings – Non current

3) The company has delayed in the payment dues to the Banks & financial Institution. The lender wise details is as below:

Name of Lenders	***Principal Amount xxx Rs Millions***		***Interest Amount xxx Rs Millions***	
xxx				
State bank of India	*214.48*	*xxx*	*366.66*	*xxx*
xxx				
Total	***1191.97***	***xxx***	***1764.92***	***xxx***

Financial Year 2022-23

Note 9 (a) – Borrowings – Non current
3) The company has delayed in the payment dues to the Banks & financial Institution. The lender wise details is as below:

Name of Lenders	***Principal Amount xxx Rs Millions***		***Interest Amount xxx Rs Millions***	
xxx				
State bank of India	*843.47*	*xxx*	*467.88*	*xxx*
xxx				
Total	***4428.52***	***xxx***	***2270.05***	***xxx***

22. It is a settled law that acknowledgment of debt in balance sheet would extend the limitation. We further note that the Corporate Debtor on 16.01.2024 sent an OTS proposal letter to the lenders (including the petitioner) stating as follows:

"4. ….NHAI had subsequently on July 25, 2019, issued termination notice to KMTR and thereafter vide letter dated August 21, 2020, made a Termination payment of Rs 181.21 crore. The entire proceeds of Rs, 181.21 crore were utilized towards debt repayment as shown in table below.

(in Rs Crore)

Sr No	***Lender***	***Facility***	***Claimed Amt***	***Termination Payment***	***Balance Claimed Amt***
xxx	*xxx*	*Rupee Term Loan*	*xxx*	*xxx*	*Xxx*
2	*State Bank of India*		*121.05*	*36.71*	*84.35*
xxx	*xxx*		*xxx*	*xxx*	*xxx*
9	***TOTAL***		***614.15***	***181.21***	***432.94***

PROPOSAL

7. The company now proposes to settle by way of One Time Settlement (OTS) towards full and final settlement of all outstanding dues under the captioned facilities for an aggregate sum of Rs 80 crore (OTS Settlement Amount).

23. This OTS proposal dated 16.01.2024 sent by the Corporate Debtor is the last acknowledgment of debt before filing the present Petition. The present Petition was filed on 16.02.2024 and therefore, is well within the prescribed limitation period.

Petition is filed in violation of the terms of the Common Agreement

24. The Corporate Debtor has taken a plea that the present Petition has been filed by the Petitioner in breach of Clause 5 of the Inter-Creditor Agreement which requires intimation to and consent of all the lenders in the consortium before taking any action.

25. We have perused the relevant clauses of the Inter-Creditor Agreement which provides that any right or remedy in relation to an event of default shall be exercised by a lender only after communicating its intention to exercise such right or remedy to all the other lenders and by obtaining the consent of a requisite percentage of lenders.

26. It is the contention of the Corporate Debtor that the Petitioner has filed the present Petition independently and without adherence to the agreed consortium mechanism is therefore contrary to the governing financing documents and the binding inter se arrangement between the lenders.

27. In this regard, it is relevant to refer to the observations of Hon'ble NCLAT in the case of ***Amitabh Kumar Jha vs. Bank of India & Anr. [Company Appeal (AT) (Ins) No. 1392 of 2019:***

"6. Per contra, it is submitted on behalf of the 'Financial Creditor'- 'Bank of India' that the 'I&B Code' empowers a single 'Financial Creditor' to initiate 'Corporate Insolvency Resolution Process', for which consent of other 'Financial Creditors' is not required. It is submitted that since the factum of debt and default has not been

disputed, the independent right of 'Bank of India' as individual lender to enforce its rights and seek triggering of 'Corporate Insolvency Resolution Process' is not affected by the terms of CLA.

9. ...It would be a travesty of justice to raise a plea that since the creditors has an inter se agreement in regard to enforcement of the liability of the debtor qua the creditor, an individual creditor should not be permitted to enforce its right arising under a contract in regard to discharge of liability for loan advanced by the creditor which is otherwise payable in law and not barred by any legal framework including the law of limitation. What transpires among the creditors in regard to 'Inter-Creditor Agreement' is a matter exclusively inter se the Creditors. The debtor has no locus to meddle with the internal arrangement and affairs of the creditors in regard to their joint or individual interests.

10. The statutory right across the ambit of Section 7 of the Code cannot be curtailed or made subservient to any 'Inter-Creditor Agreement'. The contractual rights, unless recognized by the statute as a permissible mode, would not override the statutory mechanism and right created and enforceable under statute.

......

12. In view of the foregoing discussion, we are of the considered opinion that the issue raised in this appeal is devoid of merit. The Financing Documents do not in any manner curtail or limit the rights of the 'Financial Creditor'- 'Bank of India' in its individual capacity to enforce its rights against the 'Corporate Debtor' in regard to the financial debt which is payable in law and in fact and in respect whereof default as alleged is not disputed."

28. Similarly, in ***Rajendra Kumar Pahwa vs. Canara Bank & Ors. [Company Appeal (AT) (Ins) No. 1980 of 2024],*** *decided on 03.09.2025,* it has been held by Hon'ble NCLAT that mere inter se arrangement between the members of consortium cannot curtail initiation of insolvency proceedings under section 7 of the Code by one of the members of consortium if all the other conditions required under section 7 of the Code are fulfilled. The relevant observations are reproduced hereunder:

"58. We are also in agreement with the submissions made by Ld. counsel for the appellant that the consortium agreement executed

between various members of the consortium is an agreement of ease and convenience and it is for the internal management of the consortium banks and also that this inter se agreement entered between the consortium members would not stand in the way of any application which may be moved by any of the member of the consortium under Section 7 of the IBC. We are also of the view that all the members of the consortium have advanced loan to the corporate debtor and there is also a disbursement by all and there is existence of a legally payable debt and admittedly there is also a default as the loan account of the CD was declared as NPA on 30.09.2015 and within three years of it a fresh agreement of working capital was executed on 01.03.2017 between CD and consortium of banks, demand notice under Section 13 (2) of SARFAESI Act, 2002 was also issued on 20.06.2017, possession notice was issued by PNB on 08.12.2017 and 11.12.2017 and various OTS proposal in writing were moved by the appellant ranging from 06.12.2019 till 06.05.2023, which amounts to acknowledgment of debt under Section 18 of the Indian Limitation Act and continuous acknowledgment of the debt by the appellant by moving various OTS proposals, has extended the limitation as provided under Section 18 of the Indian Limitation Act and the application appears to have been filed under the extended limitation, therefore only because the other members of the consortium have not joined the Respondent No.1 in the petition, the petition moved by one of the member of the consortium, Respondent No.1, may not be rejected only on this score, if the same is fulfilling all other conditions required for initiation of CIRP against the Corporate Debtor.

....

64. … Thus it is clear from the above placed legal precedents that the statutory right of a Financial Creditor bestowed under Section 7 of the 'IBC' cannot be curtailed or made subservient to any 'Inter-Creditor Agreement' or Consortium agreement executed between the lender banks, as the same was only for regulating the inter se affairs of the consortium.

65. So far as the submission of Ld. Counsel for the appellant, that the Respondent No. 1, alone cannot file any application under Section 7 of the IBC, is concerned, we do not find much force therein also. Section 7 of the IBC itself provides that a financial creditor either by itself or jointly with other financial creditors may move such application, therefore there appears no bar as to why a single creditor in isolation may not move any such application. However, a joint application by many financial creditors under Section 7 of the IBC is required to be filed with the consent of those who have joined therein as petitioners.

In the case in hand the application has been filed by Financial Creditor Respondent No.1, Canara Bank alone, on its own, without approval or consent of other members of the consortium and in our considered opinion there was absolutely no need to take the consent or permission from other creditors (Members of Consortium) to file any such application."

29. In the present case, there is no dispute that the Corporate Debtor has availed loan from Petitioner (earlier State of Bikaner and Jaipur and State of Punjab) and in the balance sheets, the Corporate Debtor has acknowledged outstanding debt towards the Petitioner. Further, in the OTS proposal dated 16.01.2024, the Corporate Debtor has acknowledged balance claim amount of Rs. 84.35 crores towards the petitioner which amount crosses the threshold prescribed under section 4(1) of the Code. The independent debt and default towards the Petitioner is established and the Petition is also within limitation. Thus, guided by the ratio laid down in the aforesaid judgments, we are of considered view that the inter se arrangement between the consortium of lenders would not bar the Petitioner from moving the present Petition under section 7 of the Code.

Date of Default

30. Part IV of the Petition mentions the date of default as follows:

<table>
<tr>
<td>2.</td>
<td>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED

(ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</td>
<td>Amount in Default Total amount of debt is INR 233,44,83,922/- (Indian Rupees Two Hundred Thirty Three Crore Forty Four Lakhs Eighty Three Thousand Nine Hundred Twenty Two) along with interest as stated below:
<table>
<tr><td>Particulars</td><td>Amount claimed in to be in default (in INR)</td></tr>
<tr><td>Principal Amount</td><td>122,12,84,985/-</td></tr>
<tr><td>Outstanding Interest @ 16.5% p.a from 01.12.2016 to 31.01.2024</td><td>132,02,19,809/-</td></tr>
</table>
</td>
</tr>
</table>

<table>
<tr><td></td><td></td><td><table><tr><td>Penal Interest @ 24% p.a from 01.12.2016 to 31.01.2024</td><td>16,00,37,841/-</td></tr><tr><td>Total amount including interest</td><td>233,44,83,922/-</td></tr></table>
Date of Default: The default first occurred on 01.12.2016.</td></tr>
</table>

31. Ld. Counsel for the Corporate Debtor submits that as per the averments in the Petition, it is the Petitioner's own case that the relevant instalment under the amended agreement fell due on 15.12.2016 and therefore, the date of default has been erroneously determined in the Petition.

32. Per contra, it is submitted on behalf of the Petitioner that the date of default is stated as 01.12.2016 in the Petition based on the repayment date as per the original timeline under Common Loan Agreement dated 25.01.2011 and not on the basis of the revised amendment agreement dated 19.05.2015.

33. We note that Clause 2.11 of the Common Loan Agreement dated 25.01.2011 deals with the Repayment of the loan and states as follows:

> *"**2.11 REPAYMENT***
> *The Borrower undertakes to repay the principal amount of the Loans to the Lenders in forty four (44) unequal quarterly installments (each a "**Repayment Installment**") In accordance with the Amortization Schedules set forth in Schedule V, subject to Sections 2.11 (v) and 2.12 hereof. Such first Repayment Installments shall commence from December 1, 2014."*

34. It is pertinent to note that as per the amended agreement dated 19.05.2015, the repayment schedule was shifted by 1.5 years and accordingly, the repayment instalment which fell on 01.06.2015 was shifted to 15.12.2016. The relevant clauses in the amendment agreement is reproduced below:

"B. The Borrower has now requested the Lenders to inter alia extend the original DOCP to March 7, 2016, and consequently revise the original Amortisation Schedule of the Facility by shifting the entire repayment starting from the third Repayment Installment by approximately 1.5 years (from June 1, 2015 to December 15, 2016).

C. At the request of the Borrower, the Lenders have inter alia considered and approved the request of the Borrower and have agreed to extend the DOCP of the Project to March 7, 2016 have agreed to commence payment of the Repayment Installments, starting with the third Repayment Installment from December 15, 2016."

35. Accordingly, the repayment schedule was amended as follows:

Sr. No.	**Date**	**% of Debt Repaid**
1	01-Dec-14	0.25%
2	01-Mar-15	0.25%
3	15-Dec-16	1.00%
xx	xxx	xxx

36. The aforesaid table indicates that the after the instalment due on 01.03.2015, the next instalment is scheduled on 15.12.2016. Thus, going by the revised/amended repayment schedule, it is clear that default could have occurred only on 15.12.2016 and not 01.12.2016.

37. Ld. Counsel for the Petitioner referred to the NeSL Report in 'Form D' where the date of default is stated as 01.12.2016. The relevant extract is reproduced below:

(a) Name of the Submitter: M/s STATE BANK OF INDIA

(b) Schedule-2 Bank (Y/N): Y

(c) Name of Corporate Debtor: M/s KM TOLL ROAD PRIVATE LIMITED

(d) Unique Debt Identifier Number: AAACS8577K_00000061158707753

(e) Registered Address: SBI CORPORATE CENTRE, MADAM CAMA ROAD, NARIMAN POINT, MUMBAI

(f) Total Outstanding Amount: 666894194.00

(g) Default Amount: 157135460.00

(h) Date of Default: 01-12-2016

(i) Status of Authentication of Default: DEEMED TO BE AUTHENTICATED

38. However, the date of default mentioned in NeSL is primarily based on the record submitted by the financial creditor without any independent verification. At the same time, it is also relevant to note that the Corporate Debtor has chosen not to reply to any of the notices of NeSL nor has raised any objection regarding the date of default before the NeSL. The default now stands deemed to be authenticated.

39. Ld. Counsel for the Petitioner also submitted that the date of default is in strict compliance with the regulatory mandate under the Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances issued by the Reserve Bank of India which specifically provides that non-performing assets, upon restructuring, continue to be classified with reference to the pre-restructuring repayment schedule.

40. Thus, it is submitted on behalf of the Petitioner that even though the repayment schedule was revised by shifting the 3rd instalment from 01.06.2015 to 15.12.2016, the ageing for asset classification purposes is required to be computed from the due date as per the original repayment schedule, i.e., 01.12.2016.

41. We note that the account of the Corporate Debtor has been classified as NPA on 15.03.2019 with retrospective effect from 28.02.2017 which is 90 days from 01.12.2016.

42. We deem it appropriate at this juncture to refer to the observations of Hon'ble Supreme Court in the matter of ***B. Prashanth Hegde vs. State Bank of India & Anr. [Civil Appeal No. 477 of 2022]***, *decided on 12.02.2026:*

"36. The purpose of providing the necessary particulars in a prescribed form is to give a bird's eye view of the details of the Corporate Debtor, the financial debt, the default and the date of default so that the Adjudicating Authority can discard frivolous applications at the threshold. This is clear from clause (b) of sub-section (5) of Section 7 of IBC which empowers the Adjudicating Authority to reject an incomplete application.

xxx

40. In our view, a conjoint reading of sub-sections (1), (2) and (5) of section 7 makes it clear that an application under Section 7 of a financial creditor for initiating CIRP of CD hinges on a default on part of CD of financial debt of an amount exceeding the specified threshold. The Form prescribed for making the application inter alia serves the purpose of bringing out the necessary ingredients for presentation of an application under section 7(1) of IBC. The purpose of providing the date of default is to show that the debt is due and payable i.e. it has not become time barred. Therefore, in our view, if the application is substantially in conformity with the prescribed Form and discloses the necessary ingredients for making an application under sub-section (1) of Section 7 and provides the relevant materials/ information to substantiate those ingredients, the purpose of adhering to the Form is served, and such application is not liable to be rejected under clause (b) of sub-section (5) of section 7 of IBC on the ground of any insignificant omission or error in the application. The aforesaid view finds support from use of the expression 'may' before 'reject' in Section 7(5)(b) of IBC. This means that if the Adjudicating Authority is satisfied from the materials placed before it in the application that all the necessary ingredients are satisfied for presentation of an application under section 7(1) of IBC, it may not reject the application for an insignificant omission or non-adherence to the Form."

43. Thus, guided by the observations of Hon'ble Supreme Court in ***B. Prashanth Hegde vs. SBI*** *(supra)*, we are of considered view that reliance placed by the petitioner on the NPA date to determine the date of default (which is 90 days prior to the NPA date) could not be an impediment to admit the section 7 petition when all the necessary material for establishing debt and default has been placed on record by the Petitioner and this Adjudicating Authority is satisfied that essential requirements for the purpose of admitting a section 7 petition is fulfilled.

Other grounds raised by Corporate Debtor

44. The Corporate Debtor has also made submissions regarding the purportedly ongoing OTS proposals and the awaited Arbitral Award. It is contended that the Corporate Debtor is a solvent company and is currently undergoing temporary financial distress. It is further submitted that the concession agreement with NHAI has been terminated which has prejudicially affected the Corporate Debtor due to which the outstanding dues could not be cleared. Accordingly, it is prayed that this is a fit case for this Adjudicating Authority to exercise its discretionary power under section 7(5) of the Code to dismiss the Company Petition or to keep the Petition in abeyance. Reliance was placed on the judgment of ***Vidarbha Industries Power Limited vs. Axis Bank Limited [2022 SCC Online SC 841].***

On solvency of Corporate Debtor

45. It is noted that while on one hand, the Corporate Debtor submitted that it is a solvent company, however, at the same time, it has also emphasized that no useful purpose would be served if the Corporate Debtor is admitted to CIRP as it has no value except the awaited Arbitral Award which is anticipated to be in favour of the Corporate Debtor. Thus, it is clear that the Corporate Debtor has no valuable assets and the outcome of the Arbitral Award is also obscure.

46. Be that as it may, the discretionary power of this Adjudicating Authority cannot be extended to reject application filed even against solvent companies when debt and default are clearly established.

On pending OTS proposal

47. As regards the pending OTS proposal, we are of the view that such anticipated events cannot be a ground to stall insolvency proceedings.

48. The Hon'ble NCLAT in ***Rajendra Kumar Pahwa vs. Canara Bank & Ors.*** *(supra)* while holding that inter se creditor arrangement shall not curtail section 7 proceedings, had also observed that pendency of OTS

proposal or reasons for the inability of the Corporate Debtor pay the debt is not required to looked into at the time of admission of a section 7 petition. The relevant observations are as follows:

> *"57. We are in agreement with the submissions made by Ld. counsel for the Respondent No.1 Canara Bank and Respondent No. 3 Punjab National Bank that in the guise of pending OTS the proceeding of CIRP may not be kept in abeyance for a long time. The record would reveal that many proposals of the appellant, made earlier have also been rejected by the consortium and only one proposal was pending pertaining to which only one member of the consortium i.e. Respondent No.1 Canara Bank has given its approval, that too subject to the condition that the other members of the consortium must also approve the same. Thus the same was conditional. The other members of the consortium have sent the proposal to their Higher authorities and till date the said proposal has not been approved by the head office of any of the member Bank.*
> .....
> *59. We are of the considered view that sufficient rather more than sufficient time has been granted to the appellant as well as to the other members of the consortium for the purpose of approval of the OTS proposed by the appellant and since the various OTS proposals earlier proposed by the appellant have already been rejected, we do not see any reason as to why the Adjudicating Authority should have waited for the result of the consideration of this OTS proposal by the superior authorities of the other members of the consortium."*

49. Further, in ***Bijnor Urban Cooperative Bank Limited, Bijnor & ors vs. Meenal Agarwal & ors [Civil Appeal No. 7411 of 2021]***, decided on 15.12.2021, the Hon'ble Supreme Court of India in , while considering the issue regarding the proposed OTS Scheme, has held:

> *"9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all*

possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

10. If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one-time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme."

50. In the present case, though we note that the Corporate Debtor has sent the first OTS proposal letter on 16.01.2024 i.e. prior to the filing of this Petition, however, till date, the Corporate Debtor has not placed on record any OTS proposal accepted by the consortium of lenders.

51. It is also relevant here to note that on 26.03.2025 and 10.07.2025, this Tribunal had adjourned the matter at the request of the Corporate Debtor to complete the valuation exercise with respect to the proposed OTS. Thereafter, in the order dated 04.09.2025, the Bench has recorded the statements of Ld. Counsels for the parties that the settlement talks have failed. Under such circumstances, the prayer of the Corporate Debtor to

stall/dismiss the Petition on the ground of OTS proposal warrants no merit.

Arbitral Award

52. The Corporate Debtor had referred to the case of one of its group company, M/s T. K. Toll Road Private Limited wherein the section 7 petition was withdrawn on the basis of arbitral award obtained in favour of Toll Road. However, in the present case, no arbitral award obtained in favour of the Corporate Debtor has been tendered.

53. Similarly, the Corporate Debtor's reliance on ***Vidharbha Industries*** *(supra)* will also not be applicable since in that case, an award was already existing in favour of the Corporate Debtor as on the date of admission order.

54. Moreover, in a subsequent judgment in ***M. Suresh Kumar Reddy vs Canara Bank and ors [(2023) 8 SCC 387]***, the Hon'ble Supreme Court had clarified that the judgment passed in ***Vidharbha*** *(supra)* should be confined to that case and reiterated that once debt and default is established, the section 7 petition must be admitted. Thus, the submissions of the Corporate Debtor with respect to the arbitral award is rejected.

Part payments made by Corporate Debtor

55. Lastly, the Corporate Debtor has also submitted that the Corporate Debtor has been making part payments which shows its *bona fide.*

56. It is observed that while certain payments have been made by the Corporate Debtor, however, it is also not denied that the entire outstanding dues is not cleared. The reasons for the Corporate Debtor's inability to repay the amount is, in our view, inconsequential for considering a section 7 petition under the Code. As held by Hon'ble Supreme Court in ***M Suresh Kumar Reddy*** *(supra),* even non-payment of a part of debt when it becomes due and payable will amount to default

on the part of a corporate debtor and in such a case, an order of admission under Section 7 of the Code must follow.

Conclusion

57. To sum up, the following requirements under section 7 has been fulfilled:

i. Disbursement of loan amount by the Petitioner to Corporate Debtor for time value of money, thus, there is existence of financial debt.
ii. NeSL Report in Form D showing Record of Default as 'DEEMED TO BE AUTHENTICATED. Thus, requirement under section 7(3) of the Code is fulfilled.
iii. Certified copies of entries in the accounts in the Bankers' Books as defined in section 2(3) of the Bankers' Books Evidence Act, 1891 as per Regulation 2A(a) of the CIRP Regulations to show evidence of default.
iv. Thus, default by Corporate Debtor is established.
v. Default amount is above Rs. 1 crore as prescribed under section 4(1) of the Code.
vi. The Corporate Debtor has acknowledged the debt and default from time to time and accordingly, the petition is filed within the prescribed period of limitation.
vii. Written Communication dated 08.01.2024 by the proposed Interim Resolution Professional is placed on record.

58. We refer to the following observations of Hon'ble NCLAT in ***Rajendra Kumar Pahwa vs. Canara Bank & Ors.*** *(supra):*

> *"…the Petition/Application moved under Section 7 of the IBC, 2016 must be decided within the purview of Section 7 of the Code and the same is to be considered by the Adjudicating Authority, on its own merits, taking into consideration the facts of the particular case and the Law established, in this regard. However,* ***there is no much discretion available to the Adjudicating authority, if all the requirement as mentioned under section 7 of the IBC are satisfied by a Creditor Applicant.*** *It is also to be remembered that any reason or inability of Corporate Debtor, to pay the Debt, is also*

not required to be looked into at this stage by the Adjudicating Authority."

(emphasis supplied)

59. In view of the aforesaid discussions, the Company Petition bearing no. 597 of 2024 is liable to be admitted and it is ordered as follows:

ORDER

i) The Company Petition No. (IB) 597 (MB)/2024 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **KM Toll Road Private Limited**.

ii) The Petitioner has proposed the name of **Mr. Ashish Avinash Saoji,** Registration No. IBBI/IPA-001/IP-P01268/2018-2019/12150, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 08.01.2024 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 19.12.2023. Upon verification, we note that the AFA of the proposed IRP is valid upto 30.06.2027 Accordingly, **we appoint Mr. Ashish Avinash Saoji (ashishsaoji @gmail.com) as the Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.

iii) The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.

iv) There shall be a moratorium under section 14 of the Code prohibiting the following:

a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 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;
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.

v) 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.

vi) The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vii) The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.

viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.

xii) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

60. Accordingly, the Company Petition No. 597 of 2024 is **admitted**.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

Sd/-

Lakshmi Gurung
Member (Judicial)

Uma