

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1750 of 2025

(Arising out of Order dated 25.08.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench Court VI in C.P.(IB)/414(MB)2025)

IN THE MATTER OF:

Vikram Sharma, Suspended Director,
Supreme Best Value Kolhapur
(Shiroli) Sangli Tollways Pvt. Ltd.

...Appellant

Versus

Canara Bank

...Respondent

Present:

For Appellant : Mr. Shyam Kapadia, Advocate.

For Respondents : Mr. Yash Dhruva, Ms. Ruchita Sain, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Suspended Director of the CD has been filed challenging order dated 25.08.2025 passed by National Company Law Tribunal, Mumbai Bench Court VI in C.P.(IB)/414(MB)2025 admitting Section 7 application. The Adjudicating Authority declared moratorium and appointed IRP. Challenging the order initiating Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor (“**CD**”) - Supreme Best Value Kolhapur (Shiroli) Sangli Tollways Pvt. Ltd., this Appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) Public Works Department (“**PWD**”), Govt. of Maharashtra entered into a Concession Agreement with Supreme Infrastructure India Ltd. for implementing a road project of four-laning of the existing road from Shirolī (Kolhapur) to Ankali on State Highway No.33 and from Ankali to Sangali on State Highway No.75, on a design, build, finance, operate and transfer basis.
- (ii) Special Purpose Vehicle (“**SPV**”) namely – Supreme Best Value Kolhapur (Shirolī) Sangali Tollways Pvt. Ltd. was incorporated on 31.12.2011 to execute the project. The project work was to be completed within 24 months.
- (iii) The CD availed finance from Consortium of Lenders amounting to Rs.247.50 crores in the year 2012. The Financial Creditor on 01.04.2013 on the request of the CD, sanctioned a term loan of Rs.75 crores and certain additional finance was also granted by Financial Creditor to the CD and total disbursement to the CD was made by Financial Creditor was of Rs.85.80 crores.
- (iv) The PWD failed to issue Provisional Completion Certificate. In May 2016, the CD was informed of a potential takeover of the project by National Highways Authority of India (“**NHAI**”).
- (v) The CD invoked the arbitration against the PWD. The Arbitral Tribunal gave an award on 21.06.2022 holding the CD entitled to restitution and compensation on account of

untimely takeover of the project by NHAI and a sum of Rs.318,94,70,738/- was awarded with interest @ 12.5% per annum from 20.09.2016 until payment. The award was challenged by the PWD under Section 34 of the Arbitration and Conciliation Act, 1996 before the High Court of Bombay, which proceedings are pending. The CD also instituted a Commercial Execution Application (L) No.38161 of 2022, which is also pending as on date.

- (vi) The CD committed default in repayment of amount to the Financial Creditor, hence, the account of the CD was declared as NPA on 30.07.2017. The CD issued various revival letters and lastly a letter on 11.08.2018, acknowledging the availment of facilities from the Financial Creditor. A recall noticed dated 26.02.2020 was issued by the Financial Creditor to the CD.
- (vii) Due to non-payment of dues, the application under Section 7 was filed by Financial Creditor on 29.11.2024 claiming default of an amount of Rs.346,83,19,536.66/- as on 31.10.2024.
- (viii) Notice was issued by the Adjudicating Authority to the CD, who appeared and filed its reply, objecting to Section 7 application. It was pleaded by the CD that inspite of continuous efforts of the CD to complete the project, various impediments beyond the control of the CD adversely impacted

the project. The CD invoked the arbitration and an award was passed for amount of Rs. 318,94,70,738/-, which award has been challenged by the PWD under Section 34. The CD has already initiated proceedings for execution. In Joint Lenders Meeting held on 09.05.2018, it was resolved that any amount received by Borrower whether through arbitration proceedings or settlement scheme by the Government of Maharashtra, will be deposited in the Escrow/ TRA Account and Lenders shall have first charge. It is submitted that there is no willful default committed by the CD and inability to pay solely arises from the unilateral takeover of the project by the PWD to issue Provisional Completion Certificate. The Financial Creditor is not entitled to initiate proceedings. The Company Petition is barred by time, default having been committed on 30.04.2017 and the Company Petition having been filed on 29.11.2024.

- (ix) The Adjudicating Authority after hearing the parties held that Company petition was well within limitation as after subsequent to date of default on 30.04.2017, the CD issued revival letters on 11.08.2018 and thereafter there is acknowledgement in the balance sheets of the CD for Financial Years 31st March, 2019, 31st March, 2021 and 31st March, 2022. Hence, the application under Section 7, thus, was well within time. The Adjudicating Authority also

considered the submissions of the CD based on arbitration award and reliance on judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd. vs. Axis Bank Ltd. – (2022) 8 SCC 352**. The Adjudicating Authority held that there being debt and default, the judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** shall not come to aid of the CD. The submission of the Financial Creditor that the CD is neither financially sound nor commercially viable was accepted and Section 7 application was consequently admitted.

3. We have heard Shri Shyam Kapadia, learned Counsel appearing for the Appellant; and Shri Yash Dhruva and Ms. Ruchita Sain, learned Counsel appearing for the Respondent.

4. Learned Counsel for the Appellant challenging the order passed by the Adjudicating Authority submitted that Adjudicating Authority committed error in not placing reliance on judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** It is submitted that judgment of the **Vidarbha Industries Power Ltd.** is still good law. The review petition having been dismissed the view taken by the Adjudicating Authority that the judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** is no longer the law, is not correct. It is submitted that the amount, which was claimed by Financial Creditor in Section 7 application of Rs.346,83,19,536.66/- was less than the amount claimed in the execution petition, which was Rs.561,23,88,602/- as on

07.12.2022. It is submitted that amount claimed by Financial Creditor being less than the amount claimed in the execution proceedings, which arose out of the award delivered on 21.06.2022 for Rs.318,94,70,738/- together with interest @ 12.5% per annum from 20.09.2016, the Adjudicating Authority having not appreciated the legal position correctly has erred in observing that it has no option except to admit Section 7 application.

5. Learned Counsel appearing for the Respondent refuting the submissions of the Appellant submits that the judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** in no manner supports the claim of the Appellant. It is submitted that total amount due on CD as computed is Rs.1113 crores towards Lenders of Consortium. The amount which is claimed in the execution proceedings by the CD is, thus, much less than the amount of debt, which is to be discharged. It is submitted that the CD has no assets of its own and it being not financially sound or commercially viable, the Adjudicating Authority has rightly admitted Section 7 application. It is submitted that the CD owes huge amount of debt to the Consortium of Lenders, which is much more than the award in favour of the CD. The resolution of the CD is necessary as per the provisions of the IBC.

6. We have considered the submissions of learned Counsel for the parties and have perused the record.

7. Following facts and figures reflecting from the records are undisputable between the parties:

- (i) The CD was incorporated as SPV on 31.12.2011 to execute the project of four-laning of the existing road on State Highway No.33 and State Highway No.75. The work was to be completed within 24 months from 20.10.2012 from the date of issuance of work order.
- (ii) The CD could not complete the work and PWD did not issue Provisional Completion Certificate. The CD was informed in May 2016 that project is now taken over by NHAI.
- (iii) The consortium lending, which was taken by the CD with L&T Infrastructure Finance Company Ltd. as lead Banker was Rs.247.50 crores in the year 2012. The Financial Creditor (Canara Bank) has disbursed an amount of Rs.85.80 crores to the CD in the year 2013-2016.
- (iv) Arbitral award was issued in favour of the Appellant dated 21.06.2022 for amount of Rs.318,94,70,738/- with 12.5% interest.
- (v) Section 7 application was filed by Financial Creditor claiming an amount of Rs. 346,83,19,536.66/-. The amount admitted in CIRP of the CD of Consortium Lenders is Rs.1113 crores.

8. The present is a case where there is no challenge to the finding of the Adjudicating Authority regarding outstanding default of more than Rs.1 crore and the default committed by the CD in repayment of the term loan.

9. The only submission which has been pressed by the learned Counsel for the Appellant is submission based on the judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** The submission of the Appellant is that since the amount claimed in the execution proceedings by the CD is much more than total debt claimed by Canara Bank in its Section 7 application, the judgment of **Vidarbha Industries Power Ltd.** was fully applicable and CIRP against the CD was liable to be stayed and Adjudicating Authority committed error in directing for admission of Section 7 application. It is submitted that Adjudicating Authority has failed to consider the judgment of **Vidarbha Industries Power Ltd.**, which is still good in law. The review petition filed against the said judgment has also been dismissed.

10. For appreciating the submission of learned Counsel for the Appellant, we may notice the judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** in some detail. In the case of **Vidarbha Industries Power Ltd.** Financial Creditor – Axis Bank Ltd. has filed an application under Section 7 against the CD - Vidarbha Industries Power Ltd. for initiating CIRP against it. The CD had filed an application being MA No.570 of 2020 in CP(IB) No.264 of 2020 seeking stay of the proceeding, so long as Civil Appeal No.372 of 2017 filed by Maharashtra

Electricity Regulatory Commission (“**MERC**”) is pending. The case of the CD in the above was that the CD has filed an Appeal before the Appellate Tribunal for Electricity (“**APTEL**”) challenging disallowance of the actual fuel cost for Financial Years 2014-15 and 2015-16. The APTEL allowed the appeal and directed MERC to allow the Appellant the actual cost of coal purchased for Unit-1, capped to the fuel cost of Unit-2. The CD had claimed a sum of Rs.1730 crores due to the Appellant in terms of the said order of the APTEL. Against the order of APTEL, Civil Appeal No.372 of 2017 was filed in the Hon’ble Supreme Court, which was pending. In the above background, the application was filed by the CD to stay Section 7 proceeding, which was rejected by Adjudicating Authority, against which an Appeal was filed, which too was dismissed by this Tribunal. Challenging the order of this Tribunal, an Appeal was filed in the Hon’ble Supreme Court. In the above background of facts, the Hon’ble Supreme Court has considered the scope and ambit of Section 7 of the IBC. The Hon’ble Supreme Court in **Vidarbha Industries Power Ltd.** has observed that the CD, who is *in the red* should be resolved, however, the viability and overall financial health of the CD are not extraneous matters. In Paragraph-59 of the judgment, following was observed:

“**59.** There can be no doubt that a corporate debtor who is ***in the red*** should be resolved expeditiously, following the timelines in the IBC. No extraneous matter should come in the way. However, the viability and overall financial health of the corporate debtor are not extraneous matters.”

11. The Hon’ble Supreme Court in the above case in Paragraphs 61 and 62 laid down following:

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

62. As pointed out by Mr Gupta, legislature has, in its wisdom, chosen to use the expression “may” in Section 7(5)(a) IBC. When an adjudicating authority (NCLT) is satisfied that a default has occurred and the application of a financial creditor is complete and there are no disciplinary proceedings against proposed resolution professional, it **may** by order admit the application. Legislative intent is construed in accordance with the language used in the statute.”

12. Further, elaborating the scope of Section 7 in Paragraph 76 and 77 of the judgment, following was laid down:

“76. The fact that the legislature used “may” in Section 7(5)(a) IBC but a different word, that is, “shall” in the otherwise almost identical provision of Section 9(5)(a) shows that “may” and “shall” in the two provisions are intended to convey a different meaning. It is apparent that the legislature intended Section 9(5)(a) IBC to be mandatory and Section 7(5)(a) IBC to be discretionary. An application of an operational creditor for initiation of CIRP under Section 9(2) IBC is mandatorily required to be admitted if the application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice have been delivered to the corporate debtor by the operational creditor and no notice of dispute has been received by the operational creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor.

77. On the other hand, in the case of an application by a financial creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the adjudicating authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the corporate debtor. The adjudicating authority may in its discretion not admit the application of a financial creditor.

13. What was laid down by the Hon'ble Supreme Court in the above case is that the Adjudicating Authority while considering the proceeding for initiation of CIRP, must take into account – (1) all relevant facts and circumstances; (2) including the overall financial health; and (3) viability of the CD. The Adjudicating Authority may in its discretion not admit the application of a Financial Creditor, after considering the aforesaid facts. The Hon'ble Supreme Court further laid down following in Paragraphs 86, 87 and 88:

“86. Even though Section 7(5)(a) IBC may confer discretionary power on the adjudicating authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner.

87. Ordinarily, the adjudicating authority (NCLT) would have to exercise its discretion to admit an application under Section 7 IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the corporate debtor in payment of the debt, unless there are good reasons not to admit the petition.

88. The adjudicating authority (NCLT) has to consider the grounds made out by the corporate debtor against admission, on its own merits. For example, when admission is opposed on the ground of existence of an award or a decree in favour of the corporate debtor, and the awarded/decretal amount exceeds the amount of the debt, the adjudicating authority would have to exercise its discretion under Section 7(5)(a) IBC to keep the admission of the application of the financial creditor in abeyance, unless there is good reason not to do so. The adjudicating authority may, for example, admit the application of the financial creditor, notwithstanding any award or decree, if the award/decretal amount is incapable of realisation. The example is only illustrative.”

14. In the facts of the above case, the Hon'ble Supreme Court held that since dues of the Financial Creditor are much less than the dues to which CD was entitled, i.e. Rs.1730 crores, hence, that was a relevant factor, which was required to be considered by the Adjudicating Authority, while proceeding to admit. It is relevant to notice that the Hon'ble Supreme Court after exposition of law under Section 7 has set-aside the order passed by NCLT and NCLAT and remitted the matter to NCLT for reconsideration of the application of the Appellant for stay of further proceedings on merits in accordance with law.

15. The judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** laid down that discretion is vested in the Adjudicating Authority not to admit Section 7 application, if there are relevant circumstances. We notice that although the Adjudicating Authority in the impugned order after having been satisfied that there is debt and default and relying on the judgment of the Hon'ble Supreme Court in **M/s Innoventive Industries Ltd. vs. ICICI bank & Anr. – (2018) 1 SCC 407** and judgment of the Hon'ble Supreme Court in **M. Suresh Kumar Reddy vs. Canara Bank and Ors. – (2023) 8 SCC 387** held that when debt and default is proved the Adjudicating Authority has to admit Section 7 application. The submission raised by Financial Creditor that CD is neither financially sound nor commercially viable has also been noticed by the Adjudicating Authority in Paragraph 33 of the impugned order.

16. As noted above, the learned Counsel for the Appellant has based his submission on the judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** and has submitted that the said judgment gives clear discretion to the Adjudicating Authority to reject Section 7 application in the facts of the present case. We, thus, proceed to examine the submission of the Appellant on merits, placing reliance on the judgment in **Vidarbha Industries Power Ltd.**

17. There are two reasons due to which we are unable to accept the submission of learned Counsel for the Appellant that in the facts of the present case, Section 7 application could not have been entertained. They are:

- (I) The debt which is owed by the CD is not debt only to the Canara Bank, but the CD owed debt to Consortium of Lenders and as submitted by learned Counsel for the Respondent that the debt of the Consortium Lenders, which is admitted in the proceedings is of Rs.1113 crores, which includes the debt of Financial Creditor – Canara Bank. As per the case of the Appellant in the execution proceedings, which has been filed for execution of the award, the amount claimed in the execution proceeding is Rs.561.23 crores. The amount, thus, claimed in the execution proceedings by the CD, which is pending before the Bombay High Court, are much less than total amount, which is owed by the CD to the Consortium of Lenders. The Hon'ble Supreme Court in

Vidarbha Industries Power Ltd. in Paragraph-88 has held that when the awarded/decretal amount exceeds the amount of debt, the Adjudicating Authority has to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The present is a case where dues owed by the CD are much more, which is almost double than the amount, which is claimed in the execution proceedings by the CD. Thus, in view of the judgment of the Hon'ble Supreme Court **Vidarbha Industries Power Ltd.** Paragraph-88, as extracted above, the judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** does not come to any aid to the Appellant, nor the present is a case where Adjudicating Authority could have exercised its discretion in not admitting Section 7 application or keeping the proceeding in abeyance.

- (II) The Hon'ble Supreme Court in the **Vidarbha Industries Power Ltd.** has held that Adjudicating Authority for exercising its discretion has to consider all relevant facts and circumstances including overall financial health and viability of the CD. The CD was a SPV formed to execute the project. It has no independent business apart from execution of the project, nor the SPV has any other source of income. The PWD having not issued Provisional Completion Certificate

and the project having taken over by the NHAI in 2016, the CD is neither carrying any business nor has any finances. The Adjudicating Authority in Paragraph-33 has also noticed the submission of the Financial Creditor that the CD is neither financially sound nor commercially viable. Thus, the fact that the CD is not carrying any business and it was only a SPV to carry out the project is a relevant consideration and the overall financial health of the CD indicates that it has neither any business nor any finance. These factors were relevant factors to be considered to exercise its discretion as per the law laid down by the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** Thus, in view of the fact that the CD was only a SPV and it has no other business or finance, present was not a case where the Adjudicating Authority could have exercised its discretion of keeping the proceeding in abeyance.

18. We, thus, are satisfied that even as per judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** present is not a case where the Adjudicating Authority could have exercised its discretion to keep the Section 7 proceedings in abeyance or to reject Section 7 application. We, thus, do not find any substance in submission of learned Counsel for the Appellant that in view of the law laid down by the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** the Adjudicating Authority ought to have rejected Section 7 application or

kept the proceedings in abeyance. As noted above, the present is a case where debt and default by the CD is not even disputed. For the reasons as indicated above, the judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Ltd.** does not come to any aid to the Appellant in the facts of the present case.

19. In view of foregoing discussions, we do not find any good ground to interfere with the order of the Adjudicating Authority admitting Section 7 application. In result, the Appeal is dismissed. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

10th April, 2026

Ashwani