



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1.

C.P. (IB)/488(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **28.11.2025**

NAME OF THE PARTIES: **Schaeffler Elmotec Statomat GMBH**

Vs.

Statomat Special Machines (India) Private Limited

Under Section 7 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

sd/-

NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/488/MB/2025

*[Under Section 7 of the Insolvency and Bankruptcy Code,
2016 r/w Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

SCHAEFFLER ELMOTEC STATOMAT GMBH

[Frankfurt am Main: HRB 71899]

Max-Planck-Str. 20-24,

61184 Karben,

Germany.

...Financial Creditor/Applicant

V/s

STATOMAT SPECIAL MACHINES (INDIA) PRIVATE LIMITED

[CIN No.: U29299MH1992PTC064675]

R-719, T.T.C IND. Area M.I.D.C,

Rabale, Navi Mumbai,

Mumbai – 400701.

...Corporate Debtor

Pronounced: 28.11.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Financial Creditor: Adv. Mr. Rohan Agarwal a/w Adv. Mr. Umang T. i/b Desai

Diwanji

For Corporate Debtor: Adv. Anoshak Daver a/w Siddha Pamecha i/b Raj Dani



ORDER

[PER: CORAM]

1. **BACKGROUND**

1.1 This C.P. (IB) No.488/MB/2025 (Application) was filed on 03.01.2025 by Schaeffler Elmotec Statomat GMBH, the Financial Creditor (FC), having Frankfurt am Main: HRB 71899 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Statomat Special Machines (India) Pvt. Ltd., the Corporate Debtor (CD) having CIN No.: U29299MH1992PTC064675.

1.2 As per Part IV of the Application, the amount claimed to be in default as on 03.01.2025 is Rs.3,39,86,527/- (Rupees Three Crore Thirty-Nine Lakhs Eighty-Six Thousand Five Hundred Twenty-Seven Only). In Part IV, the date of default is stated as 19.12.2024 for the facility.

1.3 The Applicant has proposed Mr. Shailesh Desai, having Registration No. IBBI/IPA-001/IP-P00183/2017-18/10362, to act as the Interim Resolution Professional (IRP).

2. **CONTENTIONS OF APPLICANT (FC)**

2.1 The CD had approached the Applicant seeking financial assistance by way of financial debt amounting to Rs.2,50,00,000/- (Rupees Two Crore and



Fifty Lakhs Only), which was extended to the CD, Statomat Special Machines (India) Pvt. Ltd..

- 2.2 That an amount of Rs. Rs.2,50,00,000/- (Rupees Two Crore and Fifty Lakhs Only) was advanced by the Applicant to the CD as a loan (“Loan”) pursuant to a Loan Agreement dated 07.11.2019 (“Agreement”). The Loan was disbursed on 04.12.2019, and in terms of Clause 4 of the Agreement, the tenure of the Loan was five (5) years from the date of disbursement.
- 2.3 The Clause 2 of the Agreement stipulated that interest on the Loan was payable annually on 31 December of every year. Clause 3 of the Agreement provided that the Loan amount, along with any outstanding interest, was repayable in lump sum upon expiry of the Loan tenure, i.e., on 04.12.2024. A copy of the Agreement is annexed and marked as Annexure D of the Application. A copy of the Applicant’s account statement evidencing disbursement of the Loan to the Corporate Debtor on 04.12.2019 is annexed and marked as Annexure E of the Application.
- 2.4 As per Form ECB-2 submitted by the CD to its Authorised Dealer Bank (Axis Bank), the CD reported that the Loan would be repayable on 19.12.2024. The said Form also records that interest was payable at the rate of 8.90% per annum for the Loan tenure of five (5) years. A copy of the Reserve Bank of India’s letter dated 02.12.2019 addressed to Axis Bank, inter alia containing the Loan Registration Number, is annexed and marked as Annexure F of the Application. A copy of Form ECB-2 submitted by the CD to Axis Bank is annexed and marked as Annexure G of the Application.



- 2.5 The Applicant is also a shareholder of the CD and holds 80% of its total equity shareholding. The remaining 20% equity is held by Mr. Chittaranjan Naik (Managing Director), who is having day-to-day control and management of the Corporate Debtor, as the Applicant have no representative in India. Mr. Naik, along with Mr. Hariharan Parameswaran Kalpathy (Director), is responsible for the daily functioning of the Corporate Debtor. The FC does not have any representation on the Board of Directors of the CD.
- 2.6 In or around 2022, the shareholders of the CD considered initiating voluntary winding up of the CD. Weekly discussions were held among the shareholders regarding the steps required for voluntary liquidation. Simultaneously, sale of the land and building owned by the CD was also explored. However, despite best efforts, neither the sale of the said property nor the voluntary liquidation process could be completed.
- 2.7 The CD was also facing certain labour disputes before the Industrial Tribunal. To facilitate settlement of these disputes, the Applicant provided further funds to the CD. As Mr. Chittaranjan Naik was in charge of the CD's day-to-day affairs, he took an active role in the settlement process. The Applicant, having no representative in India, relied entirely on Mr. Naik for completion of the settlement with workmen.
- 2.8 It is thus clear and undisputed that the CD had availed the Loan and that the Loan and interest remain unpaid. The CD is therefore in default of its repayment obligations. Accordingly, the Applicant is entitled to file the present Application.



2.9 As per the Loan Agreement, the formula for calculation of interest was: [Interest Amount / 360 (days)] × 365 or 366 (for leap year). The resultant figure represents the annual interest payable.

2.10 However, the CD calculated interest @ 8.90% p.a. on the basis of 365 days, instead of using the above contractual formula. This resulted in a lower interest amount being computed than what was actually payable under the Agreement. The CD has paid interest of Rs. 1,73,056/- for FY 2019-20 and Rs. 22,25,000/- for FY 2020-21.

2.11 Vide email dated 28.10.2024, Mr. Chittaranjan Naik (Director of CD) informed the Applicant that the CD is unable to repay the Loan and that CD has also apprised Axis Bank of the same. A copy of the email dated 28.10.2024 is annexed and marked as Annexure H of the Application.

2.12 It is admitted and undisputed that the Loan was disbursed to the CD and became repayable on 19.12.2024. The CD has failed to make payment of the principal amount and interest thereon. Accordingly, the date of default is 19.12.2024.

2.13 The Applicant, through its advocates, issued a legal notice dated 20.12.2024, calling upon the CD to pay the outstanding Loan amount and accrued interest within 7 days. A copy of the said notice is annexed and marked as Annexure I of the Application.

2.14 The CD responded vide letter dated 23.12.2024, wherein the CD expressly admitted the Loan and interest outstanding. The relevant extract is reproduced below:

“10. The said Loan has not been disputed nor has it been disputed that the Loan and the Interest accrued on it is due for repayment and is unpaid.”



2.15 A copy of the response letter dated 23.12.2024 is annexed and marked as Annexure J of the Application.

2.16 The details of the dues payable to the Applicant are set out below:

Particulars	Amount (INR)
Financial Debt due and payable as on 19.12.2024	2,50,00,000/-
Add: Interest @ 8.90% p.a. for FY 2019-20 to FY 2024-25 (up to 19.12.2024), as per Agreement	1,13,84,583/-
Less: Interest paid for FY 2019-20 and FY 2020-21 (incorrectly calculated by CD)	23,98,056/-
Total Payable	3,39,86,527/-

A copy of the detailed computation workings is annexed and marked as Annexure K of the Application.

2.17 The Applicant has attached the following documents along with the Application dated 03.01.2025:

- a) Copy of the master data with data on Nominal Share Capital and the Paid-up Capital of the CD provided by the MCA portal.
- b) Board Resolution dated 19 December 2024 authorizing Subhash Shete to represent the Financial Creditor (Attested and Certified in writing by Thomas Burst - Director of Financial Creditor on 20 December 2024).
- c) Copy of Form 2- (Consent Form of the IRP) dated 2 January 2025 along with relevant registration certificate issued by IBBI in favour of the IRP.
- d) Copy of Agreement dated 07 November 2019 between the Corporate Debtor and the Financial Creditor.
- e) Copy of the Financial Creditor's statement reflecting disbursement of the loan to the Corporate Debtor on 04 December 2019.



- f) Copy of letter dated 02 December 2019 from the Reserve Bank of India to the Authorized Dealer of the Corporate Debtor (Axis Bank) containing *inter-alia* the loan registration number.
- g) Copy of Form ECB-2 submitted by the Corporate Debtor to Axis Bank.
- h) Email dated 28 October 2024 addressed by Corporate Debtor's Mr. Chittaranjan Naik to the Financial Creditor.
- i) Copy of Legal Notice dated 20 December 2024, issued by the Financial Creditor's advocates to the Corporate Debtor calling upon repayment of the Financial Debt.
- j) Copy of the response letter dated 23 December 2024 issued by the Corporate Debtor.
- k) Computation of Financial Debt and Interest in Tabular Form.
- l) Copy of record of default with National E Governance Services Limited.

3. CONTENTIONS OF CD

3.1 An Affidavit-in-Reply dated 17.06.2025 to the original Application was filed by the CD, affirmed by one Mr. C G Naik, its authorized representative.

3.2 The CD asserts that the Application fails to meet the essential ingredients of Section 7 of the Code, namely the existence of a "financial debt" and a "default" in respect of the same.

3.3 The Representative has filed a Company Petition under Sections 241 and 242 of the Companies Act, 2013 before the Hon'ble National Company Law Tribunal, Mumbai Bench, in his capacity as a 20% equity shareholder of the CD. The said Application has been filed seeking urgent reliefs in respect of acts of oppression and mismanagement being committed by the



Applicant, who holds 80% of the equity shares and exercises complete control over the affairs of the CD.

3.4 The Application under Sections 241-242 sets out serious grievances against the Applicant, including its unilateral acquisition of control through the indirect purchase of Elmotec-Statomat GmbH by Schaeffler Technologies AG in 2018, without any notice, consultation, or disclosure to the Representative being the minority shareholder. The said acquisition, and the resultant change in control of the Corporate Debtor, was effected in breach of the principles of fair corporate governance, fiduciary duty, and transparency. The representative crave leave of this Hon'ble Court to refer to and reply upon the same as and when necessary.

3.5 That in 2019, the Applicant was acting through its German management, has taken over de facto and de jure control of the CD and has systematically excluded the Representative from key financial and operational decisions. Despite being fully aware of the deteriorating financial position of the CD - including consistent losses, cash flow distress, and slowdown in orders, the Applicant failed to infuse any capital, extend financial support, or implement remedial measures.

3.6 That in December 2019, following internal discussions the Applicant, had resolved to extend financial support to the CD by way of an External Commercial Borrowing (ECB) of Rs. 2.5 Crores. The said ECB was sanctioned and disbursed on 04.12.102019, in accordance with applicable regulatory guidelines under the Foreign Exchange Management Act, 1999 and the Master Direction on External Commercial Borrowings issued by the Reserve Bank of India. The disbursement was carried out as a shareholder-



driven financial arrangement with the declared intent of providing short-term operational support to the CD.

3.7 That on 20.12.2019, a so-called restructuring meeting was unilaterally convened by the Chief Financial Officer of the CD, acting under the instructions of the Applicant. Despite holding a 20% equity stake and being actively involved in the day-today affairs of the Company, the representative was neither consulted in advance nor given any opportunity to meaningfully participate in the said meeting. During the meeting, it was declared that the Indian operations of the CD would be permanently shut down due to alleged viability concerns. This decision was taken without any approval of the Board of Directors, without a shareholders' resolution, and without evaluating any alternate revival, restructuring, or capital infusion options. The entire process was arbitrary, non transparent, and illustrative of the oppressive conduct of the Financial Creditor in exercising its dominant control over the CD.

3.8 The present proceedings under Section 7 of the IBC have been initiated by the Applicant in furtherance of the same oppressive and prejudicial conduct, despite being itself responsible for the mismanagement that has led to the financial difficulties of the CD. The proceedings under Sections 241-242 are pending adjudication and the Applicant's conduct is the subject matter of challenge in those proceedings. The invocation of insolvency proceedings in parallel, by the party in control, is an act of bad faith and is not sustainable.

3.9 The Applicant disbursed ECB loan of Rs. 2.5 Crores to the CD on 04.12.2019. The CD has obtained the audited financial statements of



Applicant for the year ending 31.12.2019, as filed with the German Company Register.

3.10 A review of the Balance Sheet and Schedules reveals that the amount was recorded as EUR 321,502.06 under “Loans to Affiliated Companies” but fully depreciated and expensed, reducing the book value to zero. The corresponding entry is reflected under “Depreciation of financial assets and other securities and loans.”

3.11 The impairment is further confirmed in the Depreciation Schedule. The Applicant’s audited accounts for FY 2020, FY 2021, and FY 2022 do not carry forward the said 2019 ECB loan as an asset or receivable. The Applicant has treated the loan as fully written off and non-recoverable asset. Copies of the financial statements for FY 2019, FY 2020, FY 2021, and FY 2022 are annexed as **Exhibits A, B, C, and D** in the Reply.

3.12 The above treatment is supported by a Shareholder Resolution dated 03.09.2020, passed by Schaeffler Technologies AG & Co. KG (sole shareholder of the Applicant), expressly recording that the Applicant was entitled to waive repayment of the said inter-company loan, subject to RBI approval. A copy is annexed as **Exhibit E** in the Reply.

3.13 This confirms that the Applicant itself proposed to waive the repayment of the 2019 loan, in alignment with its financial treatment in FY 2019.

3.14 Despite the waiver and impairment, the Applicant has not produced any document to show reversal of impairment or reinstatement of the loan thereafter. There is no record from FY 2020 to FY 2022 indicating that the loan subsists. The loan thus stands extinguished.



3.15 In contrast, the Applicant's FY 2022 financials disclose a new ECB loan of EUR 1,055,826.97 under the head "Loans to Affiliated Companies" corresponding to the separate 2021 disbursements made in three tranches aggregating INR 9 Crores.

3.16 The Applicant by its own acts and declarations - in its audited financials and by shareholder resolution - fully waived, impaired, and written off the 2019 ECB loan, and has never reversed that treatment. There is no supporting ledger, demand, computation of interest, or Form ECB-2 filed post-2020 suggesting otherwise.

3.17 The Applicant took steps which were calculated and to ensure failure of the Company. That the Applicant has also suppressed information to the Tribunal regarding the change in its name.

3.18 The invocation of Section 7 of the IBC by the Applicant, in respect of a loan that the Applicant had itself impaired, waived, and written off more than five years ago, constitutes a blatant abuse of the process of law. The loan is neither legally enforceable nor financially recognized, and the Application does not satisfy the essential threshold requirement of existence of a "financial debt" and a "default" within the meaning of Sections 5(8) and 3(12) of the IBC.

3.19 Without prejudice to the above, it is submitted that no default exists under Section 3(12) of the Code with 19.12.2024 as the date of default and the Applicant relies on an email dated 28.10.2024 to suggest admission of inability to repay. The said email does not constitute acknowledgment of liability but merely communicates the financial distress of the CD, which



distress was the direct result of the Applicant's own decisions concerning operations and support.

3.20 The CD claims that the Application is barred by limitation. The disbursement occurred on 04.12.2019. From 2019 until December 2024, the Applicant issued no demand notice, no reminder, no recovery communication, and no invocation of any repayment obligation. Instead, the Applicant's financial statements affirmatively show the loan to have been impaired and written off. Any alleged cause of action, if at all, stood extinguished by express waiver, prolonged inaction, and conduct inconsistent with asserting a continuing debt.

3.21 The Applicant, being the 80% shareholder, has been in full and continuous control of the CD from the time of its acquisition of Elmotec-Statomat GmbH. It is specifically denied that any Indian director exercised unilateral or exclusive control. All major decisions relating to closure of operations, sale of assets, budgeting, expenditure approvals, and employee settlements were initiated, directed, supervised, and approved by the Applicant through its nominated personnel.

3.22 The proposal to liquidate the CD was initiated at the instance of the Applicant, and the decision to sell land and building, as well as settlement payments made to workers, were shareholder-driven capital contributions, not financial lending arrangements. These were internal capital decisions and cannot be construed as financial liabilities. Thus, the present Application cannot be sustained on the basis of such shareholder-driven arrangements.



3.23 Accordingly, no default exists within the meaning of Section 3(12) of the Code. A communication of financial difficulty cannot override the Applicant's formal write-off and waiver recorded in its audited accounts.

3.24 It is submitted that the Application is liable to be dismissed as no financial debt under Section 5(8) of the IBC is due or payable. The loan stands extinguished, and the proceedings amount to abuse of the insolvency mechanism.

3.25 In view of the above, the Application is not maintainable and deserves to be dismissed in limine, with costs, as it is based on a loan that no longer subsists in fact or in law.

3.26 The CD has attached following documents to support his claims –

- a) A copy of the audited financial statements for the years FY 2019.
- b) A copy of the audited financial statements for the years FY 2020.
- c) A copy of the audited financial statements for the years FY 2021.
- d) A copy of the audited financial statements for the years FY 2022.
- e) A copy of the Shareholder Resolution dated 3rd September 2020.

4. REJOINDER

4.1 Rejoinder to the Reply was filed by the Applicant on 08.07.2025.

4.2 The Applicant denies the baseless allegations of oppression and mismanagement made by the CD. The Applicant asserts that the Company Petition filed by Mr. C.G. Naik under Section 241 and 242 of the Companies Act, 2013, is a separate and distinct matter, the outcome of which has no bearing on the present insolvency proceedings under Section 7 of the Code.



- 4.3 The said Company Petition has been filed after the filing of the present proceedings, obviously to create a bogus and sham dispute in regard to the Applicant's legitimate claims herein. The pendency of such proceedings does not preclude the Applicant from exercising its statutory right to recover its financial debt.
- 4.4 It is admitted fact that Mr. Naik is not only the 20% shareholder but also the Managing Director of the CD and was in control of the day-to-day affairs and management of the CD.
- 4.5 The Applicant does not have any representation on the board of the CD, therefore the assertion that he as a minority shareholder was subject to oppression and mismanagement is completely false, baseless and unsubstantiated. In any event, the issues raised in the proceedings alleging oppression & mismanaging are extraneous and cannot be commenced herein under any circumstances whatsoever.
- 4.6 The CD's assertion that the loan has been "written off" in the books of the Applicant and its liability extinguished is legally erroneous and factually misleading. The financial statements annexed by the CD are not authentic.
- 4.7 That as per German Law, financial statements are required to be made in German and not English as are annexed. Therefore, the authenticity and veracity of the statements relied upon by the CD is questionable and disputed.
- 4.8 Assuming without admitting that the alleged financial statements are correct, even then it is a settled position of law that an internal accounting adjustment neither affects the right of a creditor to proceed against its debtor to realise its dues, nor does it extinguish a debtor's obligation to



repay its debt. Accounting practices and legal enforceability are distinct concepts.

4.9 It is important to point out here that the CD's financial statements continue to acknowledge the Loan in the liability column of its Balance Sheet. Even otherwise, the CD's reply dated 23.12.2024 to the Applicant's demand notice (Annexure J to the Application - Page No. 38 of the Application) specifically admits that:

"10. The said Loan has not been disputed nor has it been disputed that the Loan and the Interest accrued on it is due for repayment and is unpaid."

Therefore, the CD accepts and admits that the Loan is payable by it to the Applicant.

4.10 The CDs reliance on the Shareholder Resolution dated 03.09.2020, is an attempt to misrepresent its legal effect and obligations. This resolution, passed by the sole shareholder of the Applicant, Schaeffler Technologies AG & Co. KG, indicated the "Company's" (i.e. the Financial Creditor's) *entitlement* to waive repayment of the intercompany loan, but it did not create a binding obligation to do so.

4.11 The exercise of this entitlement was expressly contingent upon, and subject to, the approval of the Reserve Bank of India (RBI). Further, at best, the resolution can be seen as a permission by the shareholder of the Applicant to the Applicant to exercise the waiver upon fulfilment of certain conditions. The CD has adduced no evidence to demonstrate that such requisite RBI approval was ever sought or obtained.

4.12 Furthermore, this resolution was passed in the specific context of a non-binding Term Sheet dated 03.09.2020, for the acquisition of the entire



shareholding of the Seller (Applicant) in Statomat Special Machines (India) Pvt. Ltd. (CD) by Mr. Chittaranjan Ganesh Naik (Buyer). The Term Sheet specifically provided for the "*Waiver/Write-off of the ECB loan availed by the Target from the Seller*" as a condition precedent to closing the transaction. Since the sale stipulated in the Term Sheet did not materialize, the contingent condition for the loan waiver was not fulfilled, rendering the resolution ineffective. No binding agreement or obligation was created as no "*Transaction Documents*" were entered into by the Parties. The Applicant craves leave to refer to and rely upon the Term Sheet when produced.

4.13 That the accounting write-off does not extinguish a debt is well established through judgement of the Hon'ble Supreme Court in ***Salim Akbarali Nanji v. Union of India & Ors. (2006) 5 SCC 302***, which clarifies that mere write-off in the books of accounts does not extinguish the underlying debt or the liability of the debtor. It is a prudent accounting measure taken by a creditor but does not imply a legal waiver or release of the debtor from its obligations under contract law or otherwise.

4.14 The Applicant reiterates that a valid 'financial debt', as defined under Section 5(8) of the IBC, exists, arising from the Loan Agreement dated 07.09.2019, and the subsequent disbursement of INR 2,50,00,000/- on 04.12.2019. The existence of the said loan is duly reflected in the books of account of the CD.

4.15 The terms of the loan clearly stipulated repayment on 04.12.2024, or 19.12.2024, as per Form ECB-2. The CD's failure to repay the principal amount along with accrued interest post-19.12.2024, constitutes a clear



and indisputable "default" under Section 3(12) of the IBC. The admission by the CD's director, Mr. Chittaranjan Naik, in an email dated 28.10.2024, regarding the inability to repay the loan, further corroborates and confirms the default.

4.16 The argument that the Application is barred by limitation is unfounded. The loan was repayable on 04.12.2024 (as per Clause 4 of Loan Agreement) or 19.12.2024 (as per Form ECB-2). The present company Application is filed on 03.01.2025, i.e., well within the three-year limitation period commencing from the date of default.

5. WRITTEN SUBMISSIONS (Applicant)

5.1 Written Notes was filed by the Applicant on 13.10.2025.

5.2 The Applicant reiterated, that the present dispute arises from a default committed by the CD in repaying an admitted 'financial debt' disbursed by the Applicant. The key facts are summarised as follows:

- A Loan Agreement was executed between the parties on 07.11.2019, under which the Financial Creditor advanced a loan of INR 2,50,00,000 to the Corporate Debtor ("the Loan") (Annexure 'D' at Page 18 to 20 of the Application) bearing interest at 8.90% per annum (Annexure "G" at Page 30).
- The Loan was to be utilized for general corporate purposes and was recognised as an External Commercial Borrowing (ECB) by the Reserve Bank of India ("RBI") (Annexure 'F' at Page 23 of the Application).



- The Loan amount was disbursed to the CD on 04.12.2019 (Annexure 'E' at Page 21 to 22 of the Application). The Loan Agreement read with the Form ECB-2 submitted by the CD to its authorised dealer bank would show that the Loan was due for repayment on 19.12.2024 (Annexure 'G' at Page 28 of the Application).
- The Corporate Debtor has defaulted on its repayment obligation. The total amount in default as on the date of filing the Application is INR 3,39,86,527/-, comprising the principal of INR 2,50,00,000/- and outstanding interest.

5.3 The default occurred on 19.12.2024, when the CD failed to repay the Loan as stipulated in its own Form ECB-2 filing (Annexure 'G' at Page 28 of the Application). The default is not merely established by the Applicant but is expressly and repeatedly admitted by the CD itself.

5.4 It is submitted that the defences raised by the Corporate Debtor in its Affidavit in Reply dated 16.06.2025 are baseless, contradictory, and raised with the sole intent of delaying and derailing the present proceedings.

5.5 The other averments have already been mentioned above in the Contentions of the Applicant and to avoid repetitions it is not reiterated here.

6. WRITTEN SUBMISSIONS (CD)

6.1. Written Notes was filed by the CD on 14.10.2025.

6.2. The Applicant has filed the present Application in January 2025, alleging default in repayment of a loan of INR 2,50,00,000/- (Part IV, Page 5 of the Application) granted under a Loan Agreement dated 07.11.2019



[Annexure D, Page 18 of the Application], disbursed on 04.12.2019, and stated to be repayable within five years, i.e., by December 2024.

6.3. It is submitted that the Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) is not maintainable as it is based on a loan which is waived and no longer subsists in fact or law.

6.4. It is submitted that the Applicant, in its audited financial statements for FY 2019, treated the ECB amount of EUR 321,502.06/- corresponding to INR 2,50,00,000/- as fully depreciated and expensed, thereby extinguishing the asset in its books (Exhibit A, Page 14 of the Reply). The said impairment continued in FY 2020 (Exhibit B, Page 27 of the Reply), FY 2021 (Exhibit C, Page 38 of the Reply), and FY 2022 (Exhibit D, Page 48 of the Repl)], with no reinstatement or recognition of the loan as a receivable.

6.5. A Shareholder Resolution dated 03.09.2020 (Exhibit E, Page 58 of the Reply) passed by the Applicant authorized waiver of repayment of the said loan. The Applicant has produced no evidence of reversal of impairment or reinstatement of the loan thereafter. Consequently, the alleged loan ceased to be enforceable and cannot constitute “financial debt” or “default” under the Code.

6.6. It is further submitted that the alleged default date of 19.12.2024 is not correct. As mentioned above, no default can arise on a debt that was already waived and written off by the Applicant itself. Without prejudice to the foregoing, it is submitted that the loan was disbursed on 04.12.2019, and as per Clause 2 of the Loan Agreement [Exhibit D, Page 18 of the Application], interest was payable annually on 31.12 each year, with the



first such payment due on 31.12.2019. It is submitted that the first interest payment was made in December 2019 and no payment thereafter, and assuming but not accepting that the loan was in vogue, the first default occurred on 31.12.2020.

6.7. It is submitted that the present Application, filed in January 2025, has therefore been instituted after a lapse of around five years from the date of disbursement and the first default, and is barred by limitation under Article 137 of the Limitation Act, 1963. Even assuming, without admitting, that reliance is placed on the alleged acknowledgment of liability by letter dated 28.10.2024 [Exhibit H, Page 32 of the Application], the same is of no assistance to the Applicant. The said alleged acknowledgment was made nearly four years after the initial default and therefore cannot revive or extend a time-barred claim. It is submitted that the limitation period to file the present Application has expired, and therefore the Application is liable to be dismissed.

6.8. It is further submitted that complete absence of any demand, default notice, or legal action between 2020 and December 2024 clearly indicates that the Applicant had abandoned its claim. The cause of action, if any, stood extinguished by express waiver, prolonged inaction, and conduct inconsistent with the assertion of a continuing debt.

6.9. The Applicant, through its German management holding 80% of the CD, has exercised complete de facto and de jure control over the CD since its indirect acquisition in 2018. The CD has been systematically excluded from the decision-making process, and all key operational and financial decisions — including closure of business, asset sales, and employee



settlements — were unilaterally taken by the Applicant. The Applicant has acknowledged initiation of the Voluntary Liquidation process, however, has not provided any evidence of non-completion of the same.

6.10. The CD has independently instituted proceedings under Sections 241 and 242 of the Companies Act, 2013 before the Hon'ble NCLT, Mumbai Bench, in his capacity as a 20% shareholder. The said proceedings challenge acts of oppression and mismanagement committed by the Applicant, who has exercised dominant control over the CD's affairs since 2018. The same are pending.

6.11. It is submitted that initiation of proceedings under Section 7 of the Code by a controlling shareholder, whose mismanagement caused the CD's financial distress, is mala fide and oppressive.

6.12. In light of the above, it is submitted that the Application lacks bona fides, fails to meet the statutory thresholds of "financial debt" and "default," and deserves dismissal at the threshold. It is respectfully submitted that the Company Application is not maintainable and is liable to be dismissed with costs, as it is based on a loan which no longer subsists in fact or law.

7. ANALYSIS AND FINDINGS

7.1 We have perused the documents as placed before us and heard the Ld. Counsels for the Applicant and CD.

7.2 It is seen that the Loan Agreement was executed on 07.11.2019, under which the Applicant advanced a loan of INR 2,50,00,000/- to the CD at 8.90% per annum.

7.3 The Loan amount was disbursed to the CD on 04.12.2019.



7.4 The default is continuous, as no record of payment is produced by the CD.

7.5 The question of whether default has occurred is fundamental to the maintainability of a Section 7 application. In the matter at hand, the Applicant has disbursed an amount of INR 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only). That, the disbursement was established through the Applicant's bank statements (Copy of the statements Annexed at Pg 21-22 of the Application).

7.6 That, vide email dated 19.12.2024, Mr. Chittaranjan Naik, Director of the CD admitted to Applicant, the inability to repay the loan.

7.7 The total amount in default as on the date of filing the Application is INR 3,39,86,527/-, comprising the principal of INR 2,50,00,000/- and outstanding interest.

7.8 The CD nowhere disputed the total amount of default INR 3,39,86,527/-.

7.9 Objections raised by the CD are summarised as below: -

- i. The debt was waived, impaired and write-off of the 2019 ECB Loan.
- ii. Bar by limitation
- iii. Applicants Dominant control and oppressive conduct and Parallel proceedings under Section 241-242 of the Companies Act, 2013.

7.10 We now deal with the objections raised by the CD as below.

7.11 The debt was waived, impaired and write-off of the 2019 ECB Loan-

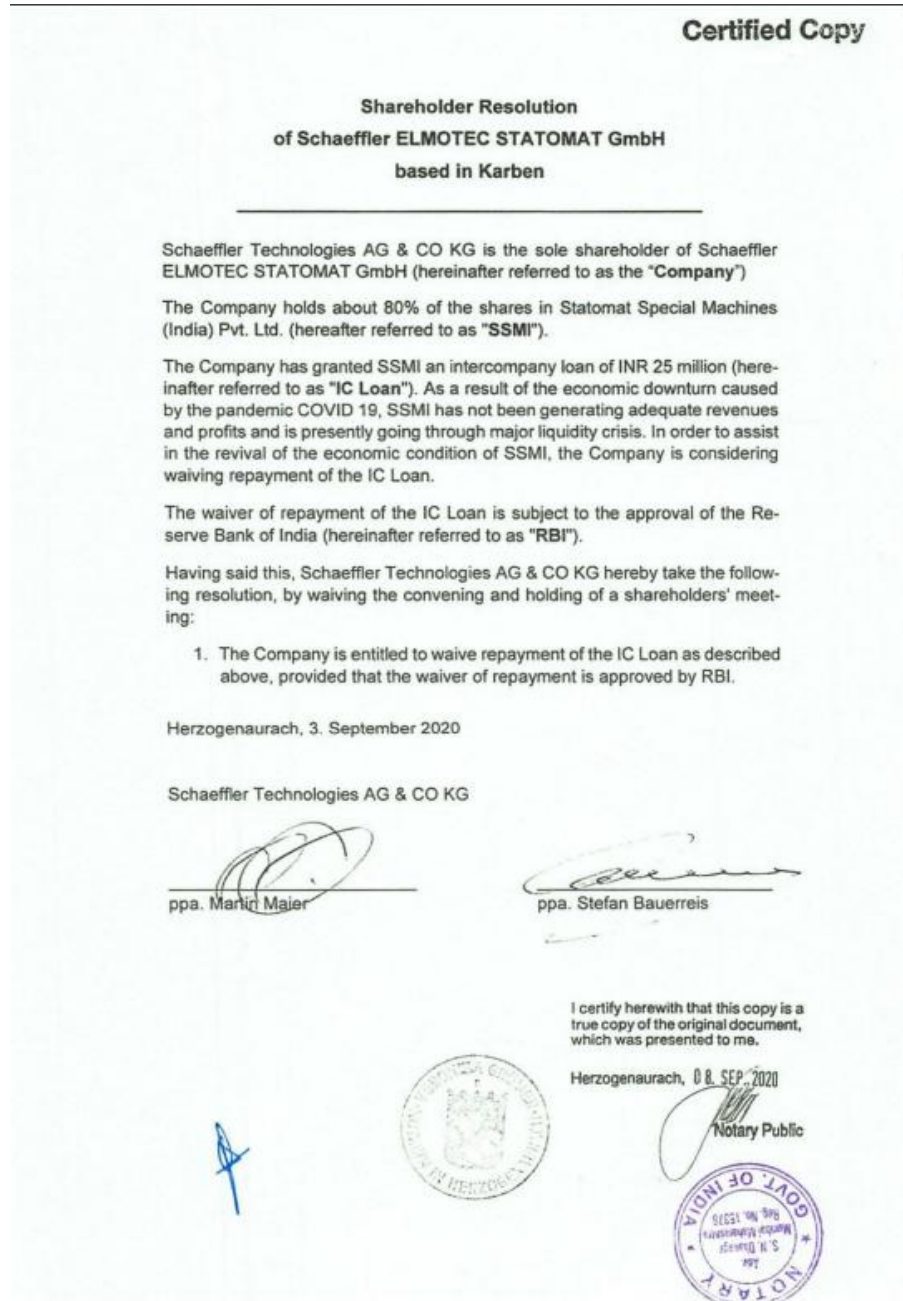
- i. Accounting Entries do not Extinguish Legal Liability – the accounting practice of writing of debts does not extinguish the debtors obligations to repay it.
- ii. This principle is affirmed, and as cited by the Applicant, by the Hon'ble Supreme Court in ***Salim Akbarali Nanji v. Union of India***



& Ors. (2006) 5 SCC 302. The relevant para of the said judgement is reproduced below:

“17. The submission proceeds on the assumptions that the bad debts written-off cannot be recovered. In fact and in law it is not so. Despite writing-off the debt is still recoverable by the Bank. The affidavit filed by the Bank also discloses the steps which are being taken to realise the dues from the debtor. Some amounts have been recovered over the year though the figure does not appear very impressive. Even so, steps are taken to recover the dues whenever possible and Respondent 6 Bank has furnished particulars of the various proceedings pending for recovery of such debts. The write-off is only an internal accounting procedure to clean up the balance sheet, and it does not affect the right of the creditor to proceed against the borrower to realise his dues.”

- iii. The claim extinguishment is directly contradicted by the CD's own admission in its letter dated 23.12.2024 that the loan is due for repayment and is unpaid as annexed in the Application as Annexure H Pg. 32-35.
- iv. The CD's claim relied upon Shareholder Resolution dated 03.09.2020 to waive the loan by the Applicant. The said Resolution is reproduced below:



- v. The waiver was "subject to the approval of the RBI". Whereas the approval by the RBI was not granted. Moreover, through the above resolution, the Applicant was authorised (i.e. made entitled) by its sole shareholder to waiver repayment of loan to the CD provided waiver of repayment is made by RBI.
- vi. As such, only authority was given by the sole shareholder of the Applicant to waive the loan to CD, however, CD has failed to bring



on record any communication by the Applicant agreeing to waiver of loan. Further, there is no RBI permission for the waiver, subject to which authorisation to waive was provided to the Applicant.

- vii. The loan waiver was a condition precedent to a particular transaction of acquisition of the 80% shareholding of the Applicant by Mr. CG Naik, since the said transaction never materialized and no definitive "Transaction Documents" were executed, the contingent condition for the waiver was never fulfilled, rendering the resolution ineffective.

7.12 Barred by Limitation –

- i. The date of default is 19.12.2024.
- ii. The date is corroborated by Clause 4 of the Loan Agreement read with the ECB-2 Form, which shows the amount was disbursed on 04.12.2019.
- iii. The loan being repayable after a period of 5 years i.e. 19.12.2024 is the correct date of default which is the date of repayment as mentioned in ECB-2 form.
- iv. The present Application having been filed on 03.01.2025, is well within limitation.

7.13 Applicants Dominant control and oppressive conduct. Parallel proceedings under Section 241-242 of the Companies Act, 2013 -

- i. Allegations of Oppression and Mismanagement are not relevant to Section 7 Application.
- ii. The reliance is made to Judgement by the Hon'ble NCLAT in ***Jagmohan Bajaj v. Shivam Fragrances Pvt. Ltd. and Anr. [2018***



SCC OnLine NCLAT 413], the internal dispute and pendency of petition under Section 241 and 242 of Companies Act, 2013 does not construed a valid defence to triggering of Insolvency Resolution Process.

- iii. Triggering of Insolvency Resolution Process cannot be defeated by taking resort to pendency of internal dispute on allegations of oppression and mismanagement.
- iv. The statutory right of the Applicant satisfying the requirements of Section 7 of the Code to trigger Insolvency Resolution Process cannot be made subservient to adjudication of an application under section 241 and 242 of the Companies Act, 2013.

7.14 The Applicant once proves the existence of debt and default, then it is bound to admit the Insolvency Application. The Bench has placed reliance on the order passed by the Hon'ble Supreme Court in the case of **Innovative Industries Limited v. ICICI Bank Limited**, [(Civil Appeal Nos. 8337-8338 of 2017) (2017) 8SCR 33] which discussed extensively the scope of the powers of the Adjudicating Authority under Section 7 of the IBC and has held that the same is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred. The relevant portion of the said Judgment is reproduced below:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form



and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.



30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

7.15 According to the applicable law, the limitation period for filing an application under Section 7 is three years from the date of default. The present application was filed on 03.01.2025, which is well within the three-year limitation period calculated from the default date of 19.12.2024. Since the Application was filed within the prescribed limitation period, the claim is not barred by limitation.

7.16 In view of the facts as stated *supra* and also in view of the existence of ‘financial debt’, which is proved by the Applicant and the ‘default’ being committed on the part of the CD, and as the application by the applicant is also not barred by the limitation and there is no disciplinary proceedings pending against the proposed IRP as per Form 2 attached along with the Application, this Tribunal is left with no other option than to proceed with the present case and initiate the CIRP in relation to the CD. We are, therefore, of the considered view that the present Application filed by the Applicant is complete in terms of Section 7 of the IBC and deserves to be **admitted**.



ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) 488/MB/2025 filed under Section 7 of IBC, 2016, by **Scheffler Elmotec Statomat GMBH**, the Applicant (FC) for initiating CIRP in respect of **Statomat Special Machines (India) Pvt. Ltd.**, the CD, is **admitted**.

We further declare a moratorium under Section 14 of IBC, 2016 with consequential directions as mentioned below:

- I. We prohibit:
 - a) the institution of suits or continuation of pending suits or proceedings against the CD, including the execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;
 - b) transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover, or enforce any security interest created by the Corporate Debtor in respect of its property, including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the



resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.

- IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Shailesh Desai**, having **Registration No. as IBBI/IPA-001/IP-P00183/2017-18/10362**, and **e-mail address ip10362.desai@gmail.com** having valid Authorisation for Assignment up to 31.12.2025 as the IRP to carry out the functions under the IBC.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VIII. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.



- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

//TG//