NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-1

C.P.(IB)/767(MB)2025

CORAM

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING DATED **29.04.2026**

NAME OF THE PARTIES **: Buldana Urban Cooperative Credit Society Limited Buldana**

Vs

Amar Seeds Private Limited

Under Section 7 of the IBC, 2016.

ORDER

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

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//SS//

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.767/MB/2025

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Applicatiosn to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

BULDANA URBAN COOPERATIVE CREDIT SOCIETY LTD.
BULDANA
[PAN No. AAAAB2572M]
Sahkar Setu, Hutatma Gore Path
Buldana-433001, Maharashtra.

…Financial Creditor/Applicant

V/s

AMAR SEEDS PRIVATE LIMITED
[CIN: U01135PN2001PTC016367]
S.No.1182/1/2/F, F.C Road
Vidyarthi Samati, Near HDFC Bank
Shivajnagar,
Pune-411005, Maharashtra.

...Corporate Debtor

Pronounced: 29.04.2026

CORAM:
HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor: Adv. Ms. Aishwarya Darda

Corporate Debtor: Adv. Mr. Omkar Deosthale a/w Adv. Mr. Daya i/b Adv. Mr. Indrajeet Hingawe.

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This is an Application bearing C.P. (IB) No.767/MB/2025 filed on 30.07.2025 by Buldana Urban Cooperative Credit Society Limited Buldana, the Applicant (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") through Mrs. Yogini Yogesh Pokale – Regional Manager of the Applicant *vide* Board Resolution dated 04.03.2025 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Amar Seeds Private Limited, the Corporate Debtor (CD).

1.2 The Applicant has filed an Additional Affidavit dated 17.02.2026 stating that Form-1 for this Application as well as the Affidavit in Support of the application was signed and executed by Mrs. Yogini Pokale, who was the then Regional Manager of the Applicant. The Applicant states that Mrs. Yogini Pokale has left the services of the Applicant and is no longer associated with its management. In view of the same, the Board of Directors of the Applicant has duly authorized Mr. Vivek Dalal, Regional Manager, to act as its authorised representative and to affirm affidavits and depose on its behalf in the present proceedings *vide* Board Resolution dated 27.12.2025.

1.3 The Applicant has proposed the name of Mr. Jitendra Palande having registration no. IBBI/IPA-003/IP-N00028/2017-2018/10188, to act as an IRP along with his written communication in Form-2 and valid AFA till 31.12.2025. On perusal of the IBBI website, it is seen that there is no valid AFA of the IRP.

1.4 The Applicant has relied on the following documents:

i. Copy of Board Resolution authorising the Authorised Signatory.

ii. Copy of Corporate Debtor's Master Data as Available on the website of Ministry of Corporate Affairs.

iii. Copy of Consent of the Interim Resolution Professional, AFA and Registration Certificate.

iv. Copy of the Loan Sanction Letter dated 10.04.2023 along with its English translation.

v. Copy of the Mortgage Deed dated 18.04.2023

vi. Copy of Loan Agreement dated 29.04.2023 along with its English translation.

vii. Copy of Certificate of Registration of Charge issued by Registrar of Companies.

viii. Copy of CERSAI assets search report

ix. Copies of Demand Notices dated 27.06.2024 and 19.09.2024 issued by the Financial Creditor to the Corporate Debtor along with its English Translation.

x. Copy of Corporate Debtor's Loan Account Statement for period from 29.04.2023 to 06.05.2025.

xi. Copy of Records of Default with the Information Utility

2. AVERMENTS OF THE APPLICANT

2.1 As per Part-IV of the Application the total amount claimed to be in default by the Applicant is Rs. 24,26,03,387/- (Twenty-Four Crores Twenty-Six Lakhs Three Thousand Three Hundred and Eighty-Seven Rupees) as on 06.05.2025.

2.2 It is submitted that the unpaid financial debt arises out of loan sanctioned to CD by the Applicant as per the terms of the Loan Sanction Letter dated 10.04.2023. Copy of the Loan Sanction Letter dated 10.04.2023 is annexed as Annexure-D to the Application.

2.3 To secure repayment of the sanctioned loan, the Directors and Guarantors of the CD created a mortgage over their personal immovable properties by executing a Mortgage Deed dated 18.04.2023. Copy of the Mortgage Deed dated 18.04.2023 is annexed as Annexure-E to the Application.

2.4 The following individuals are parties to the Mortgage Deed as mortgagors/guarantors: (i) Mr. Vikram Virsen Kadam (Guarantor No.1) (ii) Mrs. Surekha Vikram Kadam (Guarantor No.2) (iii) Mrs. Rachna Sangram Kadam (Guarantor No.3).

2.5 It is submitted that a loan agreement dated 29.04.2023 was executed between the parties pursuant to the sanction letter. Copy of the Loan Agreement dated 29.04.2023 is annexed as Annexure-F to the Application.

2.6 In terms of the Loan Agreement, the Applicant sanctioned a loan of Rs. 18 Crores along with interest at 15% for a tenure of 120 months, (108+12 months moratorium) based on the representation, assurances and guarantees provided by them. As per the Loan Agreement dated 29.04.2023, the following individuals have furnished personal guarantee for the repayment of the loan amount: (i) Mr. Amar Vikram Kadam (ii) Mr. Sangram Virsen Kadam (iii) Mrs. Rachna Sangram Kadam.

2.7 The Applicant submits that the moratorium period expired on 29.04.2024 and first instalment was due on 30.04.2024. The CD failed to pay the first instalment due on 30.04.2024 as well as consecutive two instalments due on 31.05.2024 and 30.06.2024. As per the Loan Agreement dated 29.04.2023, the failure to repay three consecutive instalments constitutes a default, rendering the entire debt due and payable. Accordingly, the default was deemed to have occurred on 31.07.2024.

2.8 The CD failed and neglected to pay the loan instalments regularly as mandated in the loan agreements. The CD had defaulted in repayment of the instalments due and accordingly the loan account has been categorised as NPA on 30.11.2024.

2.9 The Applicant sent two Demand Notices dated 27.06.2024 and 19.09.2024 to the CD for the repayment of the loan. However, the CD has failed to pay the unpaid financial debt, compelling the Applicant to approach this Tribunal for initiation of the CIRP. Copy of the Demand Notices dated 27.06.2024 & 19.09.2024 are annexed as Annexure-I and Annexure-J to the Application.

2.10 The CD failed to repay three instalment amounts on 30.04.2024, 31.05.2024 and 30.06.2024.

2.11 The date of default is mentioned as 31.07.2024.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 The CD filed Affidavit-in-Reply dated 25.10.2025, which is affirmed by Mr. Vikram Kadam – Authorised Representative of the CD *vide* Board Resolution dated 23.09.2025.

3.2 The CD in its reply raises a discrepancy in the date of default. It is evident from the translated copies of the sanction letter, loan agreement and mortgage deed annexed to the Application, the Applicant has granted a moratorium period of 12 months to the CD for repayment of the alleged loan amounts. As the alleged sum of Rs. 18 Crores was disbursed on 29.04.2023, accordingly the moratorium period of 12 months would end only in April 2024 and the first instalment towards repayment may become due in May, 2024.

3.3 The repayment schedule clearly stipulates that each monthly instalment is payable on or before 10th day of every month. Hence, any instalment could not possibly fall due on the 30th or 31st day of any month. Therefore, the date of default mentioned in the Application is contradictory to the contractual terms. Accordingly, the date of default deemed to have occurred on 31.07.2024 is flawed and baseless and the classification

of the CD's account as NPA is bad in law and in facts. The Application records debt start date as 30.04.2024. Hence, the first date of default and debt start date cannot be the same.

3.4 It is a settled procedural principle that the date of execution and the date of notarisation of an affidavit must coincide. Whereas in the present case, the affidavit is signed earlier and produced later for attestation, it amounts to an irregular and invalid notarisation. Such a lapse defeats the very object of notarisation, which is to ensure authenticity of the affidavit as executed before a competent authority, and therefore vitiates the value of affidavit forming the foundation of the petition. This procedural irregularity is not a minor curable defect, it strikes at the root of the document's validity and renders the Petition liable to dismissal on this ground alone.

3.5 It fails to conform to the mandatory requirement under Rule 34(4) of the National Company Law Tribunal Rules, 2016, which provides that every petition or application shall be verified by an affidavit in Form No. NCLT-6. The affidavit filed by the Applicant does not follow this prescribed form and fails to contain any such verification clause or disclosure of the source of information.

3.6 The CD states that the company falls within the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 ("MSME Act"). The said classification is based on the CD's investment in plant and machinery as well as its annual turnover, both of which are well within the thresholds prescribed for Micro Enterprises under Notification No. S.O. 1702(E) dated 01.06.2020 issued by the Ministry of Micro, Small and Medium Enterprises. Accordingly, the CD is entitled to all statutory protections, benefits, and remedies available to a Micro Enterprise under the MSME Act and the rules and regulations framed thereunder. Copy of the Udyam Certificate is annexed as Exhibit-D to the Reply.

3.7 The said framework mandates that before classifying the account of any MSME borrower as a Non-Performing Asset (NPA), the lending institution must first undertake the prescribed revival and restructuring exercise through a duly constituted Committee. In the present case, no such steps were undertaken. Consequently, the classification of the CD's account as NPA is premature.

3.8 The CD further contends that the present Application is a counter blast proceeding as the Applicant failed to release the goods which are stored at Jai Jinendra Cold Storage Private Limited and failed to take appropriate steps to release the goods stored at the storage facility, which has led to the default. In fact, the CD has initiated arbitration proceedings against the Applicant before the Hon'ble District Court, Pune under Section 9 of Arbitration and Conciliation Act, 1996. The CD has raised a claim of more than Rs. 24 crores towards damages and consequential losses suffered directly due to the actions, omissions, and gross inaction on the part of the Applicant.

3.9 The CD states that a Credit Facility of Rs. 1,25,00,000/- each, aggregating to a total sum of Rs. 3,75,00,000/- was sanctioned and disbursed by the Applicant under Loan Account Nos. 181/5, 181/6, and 181/7. The said facilities were extended against the security of the CD's perishable stock of seeds (hereinafter referred to as the "Stock"). The said Stock is stored at the premises of M/s. Jai Jinendra Cold Storage Private Limited, situated at Gat No. 1994/95, Pune-Saswad Road, A/P-Wadki, Taluka-Haveli, District-Pune, Maharashtra, PIN -412308.

3.10 The said stock was pledged by the CD to the Applicant and a Tripartite Agreement dated 28.10.2021 was executed between the Applicant, CD and M/s. Jai Jinendra Cold Storage Private Limited. Initially the CD used to request the Applicant to release the certain portion of the said stock against the promised consideration from customers, and the Applicant used to allow such release.

3.11 Further, the CD states that Applicant restructured the aforesaid credit facilities and vide sanction letter dated 10.04.2023 and Loan Agreement dated 29.04.2023 granted the Credit facility to the tune of Rs. 18,00,00,000/- to the CD.

3.12 The CD states that the said credit facility of Rs.18,00,00,000/- was granted by the Applicant to the CD against the alleged security of certain immovable properties vide Mortgage deed dated 18.04.2023.

4. REJOINDER

4.1 The Applicant filed the Rejoinder on 30.10.2025 and submits the following:

4.2 The Applicant submits that the existence of financial debt and the default as pleaded in the Application are neither denied nor disputed by the CD in the reply. The CD has not showed any instalment or part payment towards the loan and this unequivocal non-payment is sufficient to establish the occurrence of default.

4.3 That under the Loan Agreement dated 29.04.2023, the first instalment fell due on 30.04.2024 after the expiry of the moratorium period on 29.04.2024. The CD failed to pay the instalment due on 30.04.2024 as well as the instalments due on 31.05.2024 and 30.06.2024. Clause 14 of the Loan Agreement provides that failure to pay three consecutive instalments constitutes default and renders the entire debt due and payable. Accordingly, upon failure to pay the instalments for April-June 2024, the entire debt became due and payable and the Applicant recorded the default on 31.07.2024. The CD has not demonstrated any payment of instalments. Hence, the plea that the date of default is incorrectly mentioned is misconceived.

4.4 The CD has argued that its status as MSME and the procedures for classifying a loan account as an NPA under MSME guidelines bear relevance to the present proceedings. However, all the applicable legal provisions were duly followed in the process of classifying the account as NPA and it does not impact the merits of Section

7 Application. The CD's attempt to divert the Tribunal's attention by raising issues regarding MSME status and NPA classification is misleading and distract from the central issue of default. The debt in question is legally enforceable pursuant to the loan agreement executed between the parties.

4.5 The CD has raised an objection regarding the affidavit submitted in support of the Application, claiming that it is defective on the ground that the date of notarization appears after the date of execution. The CD contends that this sequence renders the affidavit improper. It is necessary to clarify that the notary's seal is customarily affixed after the deponent has signed the affidavit. Therefore, it is neither unusual nor improper for the notarization date to be subsequent to the date of execution by the deponent. However, it does not affect the validity or substance of the affidavit and, in any event, is a curable defect.

4.6 The CD has asserted that the current Application is merely a reaction to disputes that have arisen in connection with earlier pledge loan facilities. The Applicant clarifies that the present application is based on a financial facility sanctioned on 29.04.2023, for an amount of Rs.18 Crore. The default in repayment of this particular facility is not in dispute. The CD's attempt to link the current proceedings to alleged issues concerning the release of pledged stock is misplaced and irrelevant to the present matter.

4.7 The CD's statements regarding the value of pledged goods and alleged losses are baseless and unsupported. The valuation of stock is speculative and, in any event, cannot negate the financial debt arising from the fresh loan.

4.8 There is no denial in the reply to the fact that it has not paid even one full instalment. Further, paragraph 42 of the CD's reply contains an admission regarding existence of debt.

4.9 The CD has raised an objection on the validity of the authorization of the signatory executing the present application. It is submitted that the signatory is duly authorized in accordance with the Board Resolution passed by the Applicant. There is no requirement in law mandating that such authorization must be specific to the company or restricted in any manner as alleged by the CD. The ground raised is wholly irrelevant and misleading and does not affect the maintainability of the Application.

4.10 The Applicant has relied on the following judgments:

i. Hon'ble Supreme Court in Innoventive Industries Ltd. v. ICICI Bank [2017] 8S.C.R. 33

ii. Hon'ble Supreme Court in M. Suresh Kumar Reddy v. Canara Bank & Ors. [2023] 5 S.C.R. 387

iii. Hon'ble NCLAT in Pratap Technocrats v. Monitoring Committee of Reliance Infratel Ltd.

iv. Hon'ble Supreme Court in E.S. Krishnamurthy v. Bharat Hi-Tech Builders Pvt. Ltd., (2022) 3 SCC 161

5. ANALYSIS AND FINDINGS

5.1 We have heard the Ld. Counsels for the Applicant and the CD and have perused the records as placed before us. Our findings in the matter are as under: -

5.2 It is an admitted and undisputed position that the Applicant sanctioned a sum of ₹18 Crores in favour of the CD vide Sanction Letter dated 10.04.2023. Pursuant thereto, a Loan Agreement dated 29.04.2023 was duly executed between the parties. Copy of statement of account of the CD in the books of the Applicant is attached on page Nos. 144-145 of the Application and the same reflects that the disbursement of the amount of Rs. 18 crores was made to the CD on 29.04.2023. There is no material on record disputing the disbursement of the said loan amount. Further, to secure the said facility,

a Mortgage Deed dated 18.04.2023 was executed by the CD along with its guarantors in respect of their immovable properties.

5.3 As per the terms of the Sanction Letter dated 10.04.2023, the loan carried interest at the rate of 15% per annum for a tenure of 120 months (108+12 months moratorium period). The moratorium period expired on 29.04.2024 and, accordingly, the repayment obligation commenced thereafter, with the first instalment falling due on 30.04.2024.

5.4 Further, the CD had agreed to repay the loan in monthly instalments. The relevant clauses of the Loan Agreement are reproduced hereunder (page nos. 125-128):

> *"3) The said loan is sanctioned on the basis of the Promissory Note and was approved as a Demand Loan. However, in order to repay the said loan easily, we have agreed to accept it if it is repaid in monthly instalments of Rs. 35,06,500/- before the 10th of every month. However, we are aware and agree that repayment of the loan in instalments is not a right granted but a concession offered to us.*
> *4) We agree that if, for any reason, the amount equal to the three instalments is not paid by us, we agree that clause 3 shall be revoked, and society shall have the right to demand and recover all the amount along with the interest, debt recovery and notice expenses."*

5.5 It is observed that the CD failed to honour its repayment obligations upon expiry of the moratorium period. The first instalment fell due on 30.04.2024, followed by subsequent instalments on 31.05.2024 and 30.06.2024. The CD failed to make payment of these instalments. In terms of Clause 4 of the Loan Agreement, upon such default, the Applicant became entitled to recall the entire loan. Consequently, the loan account was classified as Non-Performing Asset (NPA) on 30.11.2024.

5.6 The Applicant sent two Demand Notices dated 27.06.2024 and 19.09.2024 to the CD demanding the repayment of the loan. Despite receipt of the said notices, the CD failed to discharge its liability. Accordingly, the Applicant has filed the present Application under Section 7 of the Code.

5.7 The CD has contended that:

i. There is a discrepancy in the date of default,

ii. There is a discrepancy in Affidavit in Support of the Application,

iii. That the CD is an MSME and that the Applicant failed to give MSME benefits to the CD,

iv. That the captioned petition is a counter blast proceeding and Disputes Regarding Pledged Goods.

5.8 The first contention of the CD that there is a discrepancy in the date of default as the moratorium postpones the repayment obligation until the expiry of 12-month period i.e. till 29th April 2024 and the monthly instalment is payable on or before 10th day of every month as per the repayment schedule and hence, the date of default would not possibly be 31.07.2024. It is pertinent to rely on the clauses of the Loan Agreement dated 29.04.2024, wherein it is stated that the payment in monthly instalment was not a right granted to the CD but a concession as it is stated by the CD itself in the Loan Agreement dated 29.04.2023. Further, the moratorium having expired on 29.04.2024, the CD was obligated to pay after the said expiry and the same would fall on 30.04.2024 as stated in the Loan Agreement. The CD failed to pay the three-consecutive instalment on 30.04.2024, 31.05.2024 and 30.06.2024. Therefore, in terms of the signed agreement between the parties, the Applicant had a right to demand the entire loan amount from the CD, if the CD fails to pay amount equal to the three instalments.

5.9 As the CD failed to pay on the said due dates, the Applicant invoked clause 3 and 4 of the Loan Agreement. It is the case of the applicant that considering the defaults which have taken place on 30.04.2024, 31.05.2024 and 30.06.2024, the entire outstanding in the loan became due and therefore 31.07.2024, which was the next

date on which the subsequent instalment became due, has been taken as the date of default. Further, it is seen from the account statement on page no. 144 of the Application, that the instalment start date is 30.04.2024.

5.10 The respondent states that as per the loan agreement, the monthly instalments became due before the 10th of every month and therefore the instalments had not become due on 30.04.2024, 31.05.2024 and 30.06.2024 and as such the date of default mentioned in the application as 31.07.2024 is not correct.

5.11 We have observed that the moratorium as per the loan agreement had expired on 29.04.2024 i.e. on expiry of 12-month period from the date of disbursement, which was 29.04.2023. Applicant states that immediately on expiry of moratorium period the monthly instalments started to become due and therefore first instalment became due on 30.04.2023 and subsequent instalment at the expiry of every one month thereafter. Applicant further states that the agreement provided that the loan was provided on the basis of a promissory note and was approved as a demand loan. However, in order to repay the said loan easily, the loan was allowed to be repaid in monthly instalments before the 10th of every month and that the repayment of the loan in instalment was not a right granted but a concession offered to the CD. We have also observed that as per the agreement on occurring of three consecutive default, the applicant was entitled to demand and recover all the outstanding amount along with the interest and after the three consecutive defaults had taken place on 30.04.2023, 31.05.2023 and on 30.06.2023, vide notices dated 27.06.2024 and 19.09.2024, the Applicant demanded the repayment of the entire outstanding. The CD failed to pay pursuant to the said notices and therefore, the default in respect the entire outstanding including principal outstanding of Rs. 18 crores had taken place. Even if it is considered that the instalments became due on 10th of every month, then the CD had defaulted on 10th

May 2024, 10th June 2024 and 10th July 2024 and in view of three consecutive defaults, the demand as made vide the demand notice dated 19.09.2024 and consequent default by the CD, also establish the default of more than the threshold amount of Rs. 1 crore by the CD. Even if we accept that the date of default stated in the Application is not correct, still the application will be maintainable being within limitation period of three years as according to the CD the default should have been based on 10th of the following month and not on the expiry of every month as claimed by the Applicant as the date of default as per the CD would be subsequent to the date of default considered by the Applicant in the Application. Needless to state that the date of default is relevant for the purpose of determining as to whether the Application is filed within the limitation period and as the objection by the CD as to the default date does not have the effect of putting the Application after the limitation period, the said objection is inconsequential and thus rejected.

5.12 During the pendency of the proceedings, it is observed that no material has been placed on record by the Corporate Debtor to demonstrate that the outstanding amount has been paid by them or to show that the default stands below the prescribed threshold. On the contrary, the default is continuing and increasing with each day.

5.13 The contention of the CD that the Affidavit in Support has discrepancy, we are of the view that this discrepancy is a curable defect and that this Tribunal vide order dated 04.02.2026 directed the Applicant to cure the said defect. The Applicant filed an Additional Affidavit dated 17.02.2026, wherein, the authorised representative of the Applicant i.e., Mr. Vivek Dalal, Regional Manager, has signed the Affidavit in Support. Therefore, this contention is extraneous.

5.14 The CD claims protection under the RBI's Framework for Revival and Rehabilitation of MSMEs. The CD asserts that the Applicant violated this framework by declaring the

account NPA without initiating a corrective action plan. While the CD's MSME status is not in dispute, the reliefs under the MSMED Act and related RBI frameworks cannot override the operation of the Code. The Code is self-contained for insolvency resolution, and CIRP can be validly initiated against MSMEs once default is established. The date relevant for the purpose of admission of the Application is the date of default and not the date of NPA. Even if procedural non-compliance occurred in declaring NPA, such non-compliance does not negate the right of an Applicant to approach the Adjudicating Authority under Section 7 of the Code so long as the Applicant is able to establish the existence of default. In the present case, the Applicant has been able to establish the existence of default.

5.15 The contention that this Application is a counterblast proceeding as the CD has filed an arbitration proceeding claiming an amount of Rs. 24 Crores towards damages and consequential losses suffered directly due to the actions, omissions, and gross inaction on the part of the Applicant is misconceived. Proceedings under Section 7 of the Code are summary in nature, wherein the Adjudicating Authority is only required to ascertain the existence of a financial debt and occurrence of default. Disputes inter se the parties are not required to be adjudicated in such proceedings. Hence, the pendency of arbitration proceedings is irrelevant for the purpose of admission of the present Application.

5.16 The contention of the CD regarding disputes pertaining to pledged goods is equally misplaced. The CD itself has admitted in its Reply (Paragraphs 42–43) that the credit facilities were restructured and fresh contractual documents, including the Sanction Letter and Loan Agreement, were executed. In view thereof, such issues do not have any bearing on the determination of debt and default under Section 7 of the Code.

5.17 The Applicant has placed on record the NeSL record of default in Form D, which reflects the Status of Authentication of default as 'Deemed to be Authenticated' and the total outstanding amount as Rs. 22,77,73,315/- and date of default as 31.07.2024.

5.18 The date of default is mentioned as 31.07.2024 and the Applicant has filed the Application on 30.07.2025. It is seen that the Application is well within limitation period as required under the Code i.e., 3 years from the date of default.

5.19 The Applicant has relied on the judgments of the ***Hon'ble Supreme Court in Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407*** and ***E.S. Krishnamurthy v. Bharath Hi Tech Builders Pvt. Ltd. (2022) 3 SCC 161***, wherein the Hon'ble Supreme Court has held that**,** once the debt and default are established than the Adjudicating Authority must admit the petition. We hold that the reliance placed by the Applicant on the above-mentioned judgments is relevant and appropriate.

5.20 This Tribunal places reliance on the judgment of ***Hon'ble Supreme Court in Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors. [Civil Appeal No(s). 2211/2024 decided on 18.02.2026]*** while examining the validity of the admission of the Corporate Debtor to CIRP has laid down as under :-

> ***"B. Validity of CIRP Admission***
>
> *28. The other aspect on which the Appellant has heavily relied is the acceptance of various sums of money paid by the Corporate Debtor purportedly under the 1st and 2nd restructuring proposals, which according to them amounts to deemed approval of such proposal. As discussed earlier, such argument flies in the face of the fact that the 2nd Respondent had resolutely maintained and rightly so, that the restructuring proposals were underpinned on pre-implementation conditions which the Corporate Debtor had failed to fulfil. Under such circumstances, receipt of various sums of money would not amount to acceptance of the restructuring proposals, thereby novating the earlier loan agreement. Neither would such part payments constitute full satisfaction of the existing debt so as to render the Section 7 application inadmissible.*

29. It has also been vociferously contended that the Corporate Debtor is an ongoing concern and does not lack the ability to repay the debt. It has a subsisting PPA for 25 years with WBSEDCL, and has raised bills of Rs. 906 crore from 01.11.2024 to 31.03.2025. It also has a continuous fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI scheme and had earned EBIDTA of Rs. 20 crore per month during the CIRP. These facts though attractive at first blush, do not yield either legal or factual justification to rebut the admission of the Section 7 application.

30. On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof. Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. "Financial creditor" is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned.26 A "financial debt" means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.27 "Operational creditor" is defined as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned.28 "Operational debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central or State government, or any local authority.29 31. In Swiss Ribbons (P) Ltd. v. Union of India [(2019) ibclaw.in 03 SC],30 such classification of creditors as financial creditors and operational creditors has been held to be constitutionally valid. The Bench underscored the essential differences between a financial creditor and operational creditor and held that financial creditors were mostly secured creditors like banks and financial institutions who extended finance to enable a corporate debtor to set up and/or operate its business. Such credit is extended to a corporate debtor under well-defined loan agreements having specified repayment schedules and reserving rights to recall the loan in case of default or restructure the same enabling a corporate debtor to tide over unforeseen financial stress. On the contrary, operational creditors are mostly unsecured creditors and their claims are relatable to supply of goods and services in the operation of the business. Ordinarily, operational debts are not based on admitted documents and the possibility of genuine disputes with regard to such debts is much higher compared to financial debts.

32. In light of such classification, the Code makes a distinction in the manner in which an insolvency process may be initiated by a financial creditor under Section 7, IBC in contradistinction to an operational creditor under Section 8 and 9, IBC. Unlike an operational creditor, a financial creditor may trigger an insolvency process

under Section 7 in respect of default of any financial debt, whether owed to itself or to any other financial creditor. While the financial creditor may directly file an application under Section 7 setting out the particulars of the financial debt and evidence of default, the operational creditor, on the occurrence of a default, is to first deliver a demand notice of the unpaid debt to a corporate debtor and the latter may within 10 days of receipt of such demand notice bring to the notice of the operational creditor the existence of a dispute or record the pendency of a pre-existing suit or arbitration proceeding in respect of such debt. Once a corporate debtor demonstrates a dispute regarding the existence of the debt, the insolvency process stands aborted vis-à-vis the operational creditor. But when the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor which has been succinctly summed up in Innoventive (supra):

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

33. Reiterating the ratio in Innoventive (supra), this Court in ES Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd. [(2021) ibclaw.in 173 SC]32 held as follows: "34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."

34. In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under Section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company.

The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is "to ensure revival and continuation of the corporate debtor by protecting the

corporate debtor from its own management and from a corporate death by liquidation."

35. The Appellant has heavily relied on Vidarbha (supra) to argue that the Adjudicating Authority has ample discretion to apply its mind to relevant factors including the feasibility of initiation of insolvency process notwithstanding the existence of default on a debt due and payable by the Corporate Debtor. In Vidarbha (supra), this Court observed:-

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

……

90. We are clearly of the view that the adjudicating authority (NCLT) as also the Appellate Tribunal (NCLAT) fell in error in holding that once it was found that a debt existed and a corporate debtor was in default in payment of the debt there would be no option to the adjudicating authority (NCLT) but to admit the petition under Section 7 IBC."

36. However, in review, this Court clarified that observations made in Paragraph 90 are restricted to the facts of Vidarbha (supra):-

"6. The elucidation in para 90 and other paragraphs [of the judgment under review] were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."

37. Finally, the apparent dichotomy between Innoventive (supra) and Vidarbha (supra) was set at rest in M. Suresh Kumar Reddy (supra), wherein this Court observed: "14. Thus, it was clarified by the order in review that the decision in Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in Innoventive Industries and E.S. Krishnamurthy. The view taken in Innoventive Industries still holds good."

38. In light of the ratio in M. Suresh Kumar Reddy (supra) there is no cavil that the ratio in Innoventive (supra) lays down the correct proposition of law and the observations in Vidarbha (supra) were made in the facts of the case and do not operate as binding precedent.

39. Even otherwise on facts, Vidarbha (supra) does not come to the aid of the Appellant. In Vidarbha (supra), this Court had taken note of an award passed by APTEL in favour of the corporate debtor which far exceeded the claim of the financial creditor, and held in the setting of such facts, initiation of CIRP was unwarranted. In the present case, Appellant's contention regarding Corporate Debtor's viability is highly dubious. Though the Corporate Debtor strenuously demonstrates its commercial viability, the NCLAT has noted that the extent of outstanding liability as on 02.01.2024 was Rs. 3103.31 crore, which far exceeds the bills raised on WBSEDCL to the tune of Rs 906 crore and EBITDA of Rs. 20 crore per month during the CIRP.

40. For these reasons, we are of the opinion the admission of the Section 7 application was lawful and does not call for interference."

(emphasis wherever required supplied)

5.21 The Applicant had proposed the name of Mr. Jitendra Palande to act as the Interim Resolution Professional (IRP) and has given his declaration in Form 2, *inter alia*, stating that no disciplinary proceeding is pending against him. The Applicant has not attached valid AFA in Form B of the IRP. Perusal of the IBBI site reveals that the AFA of the proposed RP is not valid as on the date of this order.

5.22 The Applicant has filed a purshis dated 09.04.2026 vide which the applicant has stated that the AFA of the proposed applicant was valid upto 31.12.2025 and therefore he has requested that this Tribunal may be pleased to appoint any other eligible insolvency professional as the IRP.

5.23 In view of the foregoing and as the AFA of the RP proposed is not valid, this Tribunal appoints RSDS Advisory & Restructuring LLP to act as the Interim Resolution Professional (IRP), having registration no. IBBI/IPE-0176/IPA-2/2025-26/50098 and valid AFA till 31.12.2026.

5.24 Thus, it is clear from perusal of the record that an amount of more than the threshold limit of Rs.1 Crore under Section 4 of the Code is due and payable by the CD to the Applicant. Hence, we find that the Applicant has been able to substantiate the existence of a financial debt due and payable by the CD which remained unpaid. The

debt so owed by the CD to the Applicant falls within the definition of “financial debt” under Section 5(8) of the Code.

5.25 In view of the above, we find that requisite conditions necessary to trigger CIRP in respect of the CD are fulfilled, the Application is complete as all the relevant documents have been attached by the Applicant along with the Application. Moreover, the applicant has filed NeSL record of default which reflects that the status of authentication of default as “DEEMED TO BE AUTHENTICATED”. As a result, the matter deserves to be admitted under Section 7 of the Code.

5.26 At this stage we are not quantifying the exact amount under default, which the IRP will do. We are satisfied that there exists a debt which is in default in excess of Rs. 1 Crore.

ORDER

In view of the aforesaid findings, Application bearing C.P.(IB) No.767/MB/2025 filed under Section 7 of the Code by Buldana Urban Cooperative Credit Society Limited Buldana, the Applicant, for initiating CIRP in respect of **Amar Seeds Pvt Ltd**, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below: -

I. We prohibit-

a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including 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 Securitisation 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 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 Code 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 in immediately as specified under Section 13 of the Code 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 **RSDS Advisory & Restructuring LLP** a registered Insolvency Professional Entity having Registration Number **IBBI/IPE-0176/IPA-2/2025-26/50098** and e-mail address ravindra1960_goyal@yahoo.co.in having valid Authorisation for Assignment up to 31.12.2026 as the IRP to carry out the functions under the Code.

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 Code. The officers and managers of the Corporate Debtor are directed to provide effective 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 Code read with Rule 11 of the NCLT Rules for any violation of law.

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

IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Applicant is directed to deposit a sum of Rs.3,00,000/- (Rupees Three Lakh) 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 Applicant on priority upon the funds 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. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail.

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

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

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

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

//VM//