

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1693 of 2025

[Arising out of Order dated 04.11.2025 passed by the Adjudicating
Authority (National Company Law Tribunal, New Delhi Bench, Court – IV) in
C.P. No. (IB) 172/2025]

IN THE MATTER OF:

**Era Infra Engineering Ltd.,
Through Its Authorised Representative
Mr. Niladri Chatterji** **...Appellant**

Versus

**Alok Kumar Agarwal, IRP,
Era Infrastructure (India) Ltd. & Ors.** **...Respondents**

Present:

**For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Ms.
Priya Singh and Ms. Alina Merin Mathew,
Advocates.**

**For Respondents : Ms. Smriti Churiwal, Mr. Jaiveer Kant, Ms. Meher
Thappar, Ms. Vidisha Jain and Mr. Abhishek
Periwal, Advocates for R1/RP.**

**Mr. Arun Kathpalia, Sr. Advocate with Mr.
Abhishek Anand, Ms. Aditi Sinha, Ms. Diksha
Gupta and Ms. Palak Kalra, Advocates for R-2.**

WITH

Company Appeal (AT) (Insolvency) No. 1694 of 2025

[Arising out of Order dated 04.11.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – IV) in INV.P.
No. 59/2025 in C.P. (IB) No. 172(ND)/2025]

IN THE MATTER OF:

**Era Infra Engineering Ltd.,
Through Its Authorised Representative
Mr. Niladri Chatterji** **...Appellant**

Versus

**Alok Kumar Agarwal, IRP,
Era Infrastructure (India) Ltd. & Ors.** **...Respondents**

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Ms. Priya Singh and Ms. Alina Merin Mathew, Advocates.

For Respondents : Ms. Smriti Churiwal, Mr. Jaiveer Kant, Ms. Meher Thappar, Ms. Vidisha Jain and Mr. Abhishek Periwal, Advocates for R1/RP.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Anand, Ms. Aditi Sinha, Ms. Diksha Gupta and Ms. Palak Kalra, Advocates for R-2.

WITH

Company Appeal (AT) (Insolvency) No. 1695 of 2025

[Arising out of Order dated 04.11.2025 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – IV) in C.P. No. (IB) 777/2024]

IN THE MATTER OF:

**Era Infra Engineering Ltd.,
Through Its Authorised Representative
Mr. Niladri Chatterji**

...Appellant

Versus

**Alok Kumar Agarwal, IRP,
Haridwar Highways Project Ltd. & Ors.**

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Ms. Priya Singh and Ms. Heena Kochar, Advocates.

For Respondents : Ms. Smriti Churiwal, Mr. Jaiveer Kant, Ms. Meher Thappar, Ms. Vidisha Jain and Mr. Abhishek Periwal, Advocates for R1/RP.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Anand, Ms. Aditi Sinha, Ms. Diksha Gupta and Ms. Palak Kalra, Advocates for R-2.

WITH

Company Appeal (AT) (Insolvency) No. 1697 of 2025

[Arising out of Order dated 04.11.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – IV) in INV.P.
No. 60/2025 in C.P. (IB) No. 777(ND)/2024]

IN THE MATTER OF:

**Era Infra Engineering Ltd.,
Through Its Authorised Representative
Mr. Niladri Chatterji**

...Appellant

Versus

**Alok Kumar Agarwal, IRP,
Haridwar Highways Project Ltd. & Ors.**

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Ms. Priya Singh and Ms. Heena Kochar, Advocates.

For Respondents : Ms. Smriti Churiwal, Mr. Jaiveer Kant, Ms. Meher Thappar, Ms. Vidisha Jain and Mr. Abhishek Periwal, Advocates for R1/RP.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Anand, Ms. Aditi Sinha, Ms. Diksha Gupta and Ms. Palak Kalra, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals have been filed by Era Infrastructure Engineering Ltd. the holding company of the corporate debtor (principal borrower and corporate guarantor) challenging the order dated 04.11.2025 passed by the adjudicating authority (National Company Law Tribunal, New Delhi Bench, Court – IV) admitting Section 7 application filed by National Asset Reconstruction Company Ltd. (NARCL), the respondent No. 2 herein against the principal borrower and the corporate guarantor. By order of the same day, intervention petition filed by the appellant i.e., INV.P. No.59/2025 in C.P. (IB) No.172/2025 and in INV.P. No.60/2025 in C.P. (IB) No.774/2025 were rejected. Aggrieved by the aforesaid orders, these appeals have been filed.
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2. Background facts and sequence of the events giving rise to these appeals need to be noticed first:

- i. The appellant, Era Infrastructure Engineering Ltd. (EIEL) is an Engineering Procurement and Construction Company engaged primarily in Build-Operate-Transfer Infrastructure Projects.
- ii. Appellant was successful bidder for the Muzaffarnagar Haridwar section from 131 KM to 211 KM of NH-58 in state of Uttar Pradesh and Uttarakhand.
- iii. The Project was awarded by the National Highway Authority of India (NHAI). In compliance with NHAI, standard condition mandating incorporation of Special Purpose Vehicles (SPV), Haridwar Highways Project Ltd. (HHPL) was formed on 02.02.2010 as 100% subsidiary of the appellant to execute the Project.
- iv. The financing for the Project was obtained by HHPL through consortium of lenders Axis Bank and other banks.
- v. On 31.07.2010 at the request of HHPL, Axis Bank sanctioned a loan to the tune of Rs.690.60 crore for part financing of the Project – Term Loan I. Axis Bank invited Punjab National Bank (PNB) and other Banks including Bank of India to participate in part financing for the Project.
- vi. A Joint Lender Forum agreed to grant additional term loan of Rs.290.48 crore as Term Loan II. Due to delay in commencement of the Project Term Loan III was sanctioned for Rs.28.6 crore.

- vii. The corporate debtor executed various security documents including registration of charge before the Registrar of Companies (RoC).
- viii. On 29.06.2016 a corporate guarantee was executed by Era Infrastructure (India) Ltd. (EIL) to the Bank of India for Term Loan I, Term Loan II and Term Loan III totalling to Rs.149.48 crore.
- ix. Borrower's account was declared Non-Performing Asset (NPA). Notice under Section 13(2) was issued by the Bank of India on 03.04.2019.
- x. Corporate Insolvency Resolution Process (CIRP) proceedings commenced against EIL the appellant herein by the order of adjudicating authority 08.05.2018 on application filed by Union Bank of India. In the CIRP of the appellant a resolution plan was submitted by M/s. S.A. Infrastructure Consultants Pvt. Ltd., which plan came to be approved by the adjudicating authority on 11.06.2024.
- xi. The appellant, EIL had given a sponsor undertaking with respect to financial facility extended to SPV including HHPL.
- xii. In the CIRP of the appellant, claims were filed by financial creditors including Bank of India, under which shortfall undertaking given by sponsorer i.e., appellant were also included. Claim pertaining to shortfall with respect to dues of HHPL was also filed by lenders in the CIRP of the appellant.
- xiii. The lenders assigned their debt in favour of NARCL on 28.03.2024.
- xiv. On 05.09.2024, an Agreement for the sharing of arbitral proceeds was executed between the appellant, assenting financial creditors including

the NARCL to give effect to Part B of the resolution plan detailing terms and conditions for the distribution of proceeds from arbitration awards of SPVs in terms of the resolution plan.

- xv. NARCL filed an application under Section 7 against EIL the corporate guarantor being C.P. (IB) No.172/2025 alleging default and principal amount of Rs.143,75,79,510/- along with the interest. The corporate guarantor, EIL had given corporate guarantee to the Bank of India for the amount of Rs.143,75,79,510/-. Date of default mentioned in Part IV was 03.04.2019.
- xvi. Prior to filing of Section 7 application against the corporate guarantor, the NARCL has filed a Section 7 application being C.P. (IB) No.777/2024 against HHPL claiming total default of amount i.e., Rs.2,386,51,75,911/- as on 08.08.2024 and date of default was mentioned on 24.02.2017.
- xvii. In the C.P. (IB) No.777/2024 notices were issued, corporate debtor HHPL filed its reply opposing the application. In C.P. (IB) No.777/2024, the appellant EIL has filed an intervention application being INV.P. No.59/2025. Similarly, C.P. (IB) No.172/2025 filed against EIL, intervention petition was filed by the appellant.
- xviii. Adjudicating authority heard the C.P. (IB) No.172/2025, C.P. (IB) No.777/2024 as well as INV.P. No.59/2025 & INV.P. No.60/2025 by separate orders dated 04.11.2025. C.P. (IB) No.777/2024 against the HHPL has been admitted and by order of the same date, INV.P. No.60/2025 filed in C.P. (IB) No.774/2025 has been rejected. By order

of the same date 04.11.2025, C.P. (IB) No.172/2025 against EIIL has been admitted and by order of the same date, INV.P. No.59/2025 filed by the appellant in C.P. (IB) No.172/2025 has been rejected.

- xix. Aggrieved against the order passed in C.P. (IB) No.172/2025 admitting Section 7 application, Comp. App. (AT) (Ins.) No.1693/2025 has been filed, against the order dated 04.11.2025 rejecting INV.P. No.59/2025, Comp. App. (AT) (Ins.) No.1693/2025 has been filed, against an order dated 04.11.2025 admitting C.P. (IB) No.777/2024, Comp. App. (AT) (Ins.) No.1695/2025 has been filed and against an order dated 04.11.2025 rejecting INV.P. No.60/2025, Comp. App. (AT) (Ins.) No.1697/2025 has been filed.

3. We have heard learned Sr. counsel Mr. Krishnendu Dutta appearing for the appellant in Comp. App. (AT) (Ins.) Nos. 1693 & 1694/2025 and learned Sr. counsel Mr. Abhijeet Sinha appearing for the appellant in Comp. App. (AT) (Ins.) Nos. 1695 & 1697/2025. Learned Sr. counsel Mr. Arun Kathpalia has appeared for NARCL, the financial creditor. Learned counsel Ms. Smriti Churiwal has appeared for Resolution Professional (RP).

4. The submission which has been advanced by learned counsel for the appellant being common in the above appeals, they are being referred to as submissions of the appellant.

5. Learned counsel for the appellant submitted that Section 7 application filed by NARCL against the HHPL, principal borrower and EIIL, the corporate guarantor was not maintainable. It is submitted that in the resolution plan of the appellant the holding company, the lenders of HHPL had already filed *Comp. App. (AT) (Ins.) Nos. 1693 – 1695 & 1697 of 2025*

their claim, which claim was admitted and dealt with in the resolution plan. When the lenders have filed their claim and Form-C filed in the CIRP of the appellant clearly mentions dues against SPV also i.e., HHPL and the said debt has been dealt and resolved in the CIRP no legally enforceable debt subsists on the date of filing of the Section 7 application by NARCL, hence the order of admission passed by NCLT is wholly unsustainable. It is submitted that after approval of the resolution plan by the adjudicating authority in the CIRP of the appellant dated 11.06.2024 and after the Sharing of Arbitral Process Agreement (SAP Agreement) was entered on 05.09.2025 between the appellant, lenders and NARCL providing for distribution of the receipt of arbitral proceeding relating to SPV, there was no occasion to file any Section 7 application by the NARCL against the principal borrower and corporate guarantor. It is submitted that the resolution plan approved by the adjudicating authority under Section 31 is binding on lenders which include NARCL, the assignee of the debt by lenders. Initiation of proceedings under Section 7 against HHPL and corporate guarantor shall lead to non-implementation of the resolution plan approved on 11.06.2024 which is impermissible. The debts of lender including the debt due on SPV i.e., HHPL having been admitted, addressed, resolved and extinguished after the approval of the resolution plan on 11.06.2024, there is no legally enforceable debt to initiate any proceedings under Section 7. It is submitted that intervention application filed by the appellant in C.P. (IB) of principal borrower and corporate guarantor has been erroneously rejected, appellant being holding company and having claimed that debt claimed in Section 7 application has already been resolved was entitled to be permitted to

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intervention in the CIRP process in the proceeding before the NCLT. The debt which is claimed in Section 7 application against the principal borrower and corporate guarantor stood eclipsed and extinguished in the CIRP of the appellant. There was treatment of HHPL debt under the approved resolution plan. Arbitral proceeds of HHPL form an integral part of the appellant's resolution framework. CIRP of EIL frustrates implementation of the resolution plan approved on 24.06.2024. Impugned order fails to consider and adjudicate submissions advanced by the appellant in intervention petition.

6. Learned Sr. counsel Mr. Arun Kathaplia appearing for the financial creditor refuting the submissions of the counsel for the appellant submits that the debt of lenders qua the EIEL were resolved and extinguished. The claim which was filed by the lenders in the CIRP of the EIEL were with respect to sponsor's shortfall undertaking which was an unsecured debt. The above unsecured debt was dealt with in the resolution plan of the appellant. The debt of HHPL arise from Term Loan Agreements I, II & III which has security documents. The debt of lenders was secured debt with respect to HHPL, the secured debt of lenders due against HHPL cannot be extinguished in CIRP of the appellant. The resolution plan dated 20.09.2022 filed in CIRP of the appellant does not extinguish/deal with the liability of the debt owed by the corporate debtor under term loans. There was no release of security created by principal borrower in the resolution plan of appellant. Pay out proposed in the resolution plan of the appellant was toward assenting unsecured financial creditors which pay out has no relation with respect to secured debt of lenders against the term loan extended to HHPL. The submission of the *Comp. App. (AT) (Ins.) Nos. 1693 – 1695 & 1697 of 2025*

appellant that entire debt against the principal borrower and corporate guarantor was eclipsed by approval of the resolution plan of the appellant is misconceived. In the CIRP of the appellant, a clarification affidavit dated 28.11.2022 was filed by the Successful Resolution Applicant (SRA) clarifying that there shall be no effect on the obligation of the personal guarantor for the debt of the corporate debtor and shall not discharge the claims of unsecured financial creditor who will continue to retain their rights for realisation of the debt from the principal debtor/any other guarantor. Sharing of arbitral proceeds does not discharge the secured financial debt of financial creditor against principal borrower. In any event, the said is private inter se arrangement for sharing of arbitral proceeds cannot, in law, operate as a waiver, novation, or satisfaction of a secured financial debt. It is submitted that Bareilly Highways Project Limited was also a SPV of the appellant who was also included in sharing of Arbitral Proceeds Agreement. SBI filed an application under Section 7 against Bareilly Highways Project Limited. It is submitted that adjudicating authority has rightly admitted Section 7 application. It is further submitted that appellant being a shareholder of the corporate debtor does not have any locus to challenge the admission of the CIRP. It is submitted that shareholder has no locus to challenge that admission of CIRP of the corporate debtor.

7. We have considered the submissions of the counsel for the parties and perused the records.

8. The entire focus of the counsel for the appellant challenging the impugned order is based on resolution plan's approval in the CIRP of the

appellant dated 11.06.2024. As noted above, it is contended that the lenders of HHPL also filed their claim in the CIRP of the appellant, which claim clearly tallies with the claim which has been made in Section 7 application filed against the principal borrower. It is submitted that when the lenders by filing their claim in Form-C which claim also included the dues against the SPV i.e., HHPL and said dues have been resolved and pay outs have been made to the lenders for same debt, no proceedings under Section 7 can be initiated subsequently by the financial creditor against the SPV, HHPL and the corporate guarantor.

9. Appellant has filed a convenience compilation dated 19.11.2025 on which convenience compilation, both the parties have placed reliance. We thus refer to the convenience compilation and the documents included therein while considering the submissions of both the parties. CIRP against the appellant i.e., EIEL commenced by order dated 08.05.2018 in C.P. (IB) No.190/PB/2017 filed by Union Bank of India. As noted above, a consortium of lenders lead by Axis Bank has extended term loan was for Rs.690.60 crore to HHPL. Common Rupee Term Loan was executed on 31.07.2010. Additional term loan of Rs.290.48 crore referred to as Term Loan II was extended and further Term Loan III of Rs.51.26 crore was extended by Axis Bank and Union Bank of India and UCO Bank in the year 2017, with respect to aforesaid term loans, sponsor's undertaking was given by the appellant. We may refer to Common Rupee Term Loan Agreement entered between the HHPL and the Axis Bank, in which clause 6.1.32 promoters/sponsors undertaking was contained. Clause 6.1.32(b) is as follows:

“6.1.32 Promoters/Sponsors’ Undertaking

The Borrower shall procure that Sponsors shall furnish the following undertakings

(b) in the event of Termination, Payments received upon the termination of Concession Agreement is not sufficient to meet the Outstanding Due Amount EFEL, shall make good such shortfall”

10. A sponsors undertaking was given by the appellant in the above reference dated 31.07.2010. Clause 5 was with regard to undertaking for termination shortfall. Clause 5 of sponsors undertaking is as follows:

“5. UNDERTAKING FOR TERMINATION SHORTFALL

In the event that the Termination Payments (as defined under the Concession Agreement) are not adequate to repay the Dues in full, then EIEL undertakes to pay to/deposit with the Senior Lender the Shortfall Amounts within three (3) days of the date of notice of demand from the Senior Lender/ Lender's Agent.

For the purposes of this Agreement, the term "Shortfall Amounts" shall mean the Dues minus the amounts demanded from and payable by NHAI as Termination Payments pursuant to the notice of demand in this regard.

EIEL shall forthwith on demand as stated herein (and in any event within three (3) Business Days of the demand) and without any contest, dispute or demur, pay to the Security Trustee the whole of the Shortfall Amounts, and/or any other monies as may be then due to the Senior Lender in respect of the Loan Facility.

This undertaking shall remain in full force and effect until all the Dues of the Senior Lender has been discharged in full to the satisfaction of the Senior Lender and the Senior Lender certifies the same in writing.”

11. Now we come to Form-C claim submitted by the lenders in the CIRP of the appellant. For example, we may refer to Form-C filed by the Union Bank of India dated 14.02.2014 in the CIRP of EIEL. The entire claim of Union Bank of India was Rs.2365,82,64,753/- as on 08.05.2018. The breakup of

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the claim was mentioned in which HHPL was also mentioned. It is useful to notice the breakup of exposure in column 4, which is as follows:

S. No.	PARTICULARS	
4.	Total Amount of Claim (including any interest as at the insolvency commencement date)	Rs.2365,82,64,753.78 (Rupees Two thousand three hundred sixty five crore eighty two lakh sixty four thousand seven hundred fifty three and paise seventy eight only) as at the insolvency commencement date i.e. on 08.05.2018. Details are given in Annexure-1. It includes, BGs of Rs.40.71 crore which are outstanding in the account as on date (including expired BGs of Rs.20.32 crore. [Exposure in India: Rs.2157,91,99,209.38]* (Rupees Two thousand one hundred fifty seven crore ninety one lakh ninety nine thousand two hundred nine and paise thirty eight only) as on 08.05.2018 Exposure in Hong Kong (EIEL): USD 30,991,511.43 (United States Dollar Thirty Million Nine Hundred Ninety One Thousand Five Hundred Eleven And Forty Three Cents) equivalent to Rs.2,079,065,544.40 (Rupees Two hundred Seven Crores Ninety Lakh

		<i>Sixty Five Thousand Five Hundred Forty Four And Paisa Forty only) at an exchange rate of Rs.67.085 per USD) as on 08.05.2018.</i>
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** The break-up of exposure in India is as under:-*

<i>Name of the Company</i>	<i>Claim Amount</i>
<i>Era Infra Engineering Limited-Crystallised liability</i>	<i>1675,07,87,270.72</i>
<i>Outstanding BGs</i>	<i>40,71,04,257.00</i>
<i>Dehradun Highways Project Limited</i>	<i>53,56,749,26.98</i>
<i>Haridwar Highways Project Limited</i>	<i>170,00,22,883.39</i>
<i>Bareilly Highways Project Limited</i>	<i>218,56,09,871.29</i>
<i>Total</i>	<i>2157,91,99,209.38</i>

12. In the claim form with respect to security mentioned, there was no reference of any security by HHPL. Similarly, we may also notice the claim Form-C filed by Bank of India dated 31.01.2019 the proof of claim was submitted by Bank of India in respect of the CIRP in the case of M/s. EIEL. The claim form mentioned that Bank of India has sanctioned the security facility to M/s. HHPL. Details of securities were also mentioned in the claim form.

13. It is an admitted fact between the parties that the claim of lenders with respect to claim under shortfall undertaking against the EIEL was unsecured
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claim and was admitted as unsecured claim and treatment of unsecured claim was given in the resolution plan. Pay out to assenting financial creditors in the financial proposal in the plan is as follows:

“PART – B: FINANCIAL PROPOSAL

1. BID AMOUNT

For	In Amount (INR in Crores)		Details	
	Upfront Payment Amount	Committed Payment	Residual Payment	
A. Mandatory Payments				
Payouts to Unsecured Assenting Financial Creditors	1	NA	The Resolution Applicant proposes to share the proceeds received from arbitral awards in the manner as set out below:	
			Proceeds from Arbitral Awards (Rs. Crores)	% Proposed to be shared ****
			>3000	10%
			The Resolution Applicant proposes to issue 1% Equity Shares of the Company to the unsecured Assenting Financial	

			<i>Creditors on the Closing Date.”</i>
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14. Release and securities interest were also mentioned in resolution plan.

In clause 6, item No. 2 with regard to release and securities, following has been stated:

“6. TERMS AND CONDITIONS OF THE COMMITTED PAYMENTS

<i>S. No.</i>	<i>Particulars</i>	<i>Heads and References</i>
<i>2.</i>	<i>Release of Security Interest</i>	<i>The Information Memorandum enlists the following securities which are charged to the Secured Financial Creditors. For the sake of abundant caution, the following is the list of securities which are charged to the Secured Financial Creditors, as stated in the Information Memorandum is outlined below.</i> <i>The Resolution Applicant states that on and from the Closing Date, the security interest of the Secured Financial Creditors over the assets mentioned below shall stand released. No separate consent shall be sought from the Secured Financial Creditors for monetization of the these secured assets.</i> <i>1. Charge on Fixed assets of the Corporate Debtor;</i>

		2. Exclusive and pari-passu charges by way of hypothecation on equipments and machinery of the Corporate Debtor; 3. Pari-passu first charge on inventory cum book debts/ current assets of the Corporate Debtor; 4. Non-disposal Undertaking and Power of Attorney (NDU-PoA) executed by the Corporate Debtor; 5. Charge over Debt Servicing Reserve Account of the Corporate Debtor; 6. Charge on the immovable property admeasuring 1670.75 sq. mts. forming part of Survey No.855 situated at Mouje Indrad, Kadi Taluka, District Mehsana, and Gujarat; 7. Charge on land situated at in the limits of Kothur Revenue Village, Grampanchayath a Mandal, Mehboobnagar, Andhara Pradesh in the name of the Corporate Debtor; 8. Charge on land & Building situated at Khewat No, 387 Min, Mustikit/Kila No. 90/3/3,3,5,6,7 and 8/1, Intikal No. 1590, Sakna Khori, Tehsil Dadri, District Bhiwani,
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		<i>Haryana measuring 3.98125 acre;</i> <i>9. Charge on land situated at Mehsana, Gujarat area 1770.065 sq. yard in the name of the Corporate Debtor;</i> <i>10. Release of all pledge on shares held by the Coprorate Debtor in its special purpose vehicles and/or its subsidiaries;</i> <i>11. Kelease of charge on all intangible assets of the Corporate Debtor;</i> <i>12. rights, interest, and obligations of the Corporate Debtor assigned in favour of all lenders.</i>
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15. From the above release of securities, it is clear that there was no security of principal borrower which was included therein. Learned counsel for the financial creditor has referred to and relied on the clarification affidavit which was filed by the SRA in the CIRP of the appellant. Clarification affidavit dated 28.11.2022 has been brought on record is part of the convenience compilation. The affidavit clearly mentioned that clarification shall be integral part of the resolution plan and in event of any contradiction between the proposal contained in the resolution plan and clarification, clarification shall prevail. Paragraph 8 of the affidavit is as follows:

“8. Since, the clarifications as submitted by the Resolution Applicant are vital for proper understanding of the intent and overall effect of various proposals proposed by the Resolution Applicant vide its Resolution Plan, it is essential that the Resolution Applicant make a binding statement to affirm the true intent and effect of the said Clarifications in the context

of the Resolution Plan as submitted by the Resolution Applicant in the CIRP of the Corporate Debtor, accordingly, by way of this affidavit, it is hereby duly affirmed and stated on behalf of the Resolution Applicant that:

- a. The Clarifications submitted by the Resolution Applicant as per the Annexures II & Annexure III attached, have been given in pursuance to the queries and clarifications sought by the CoC in the CIRP of the Corporate Debtor under section 30 of the Code with full knowledge and belief that the said Clarifications shall convey the true intent and effect of the relevant provisions of the Resolution Plan of the Resolution Applicant.*
- b. Such Clarifications shall be binding on the Resolution Applicant and shall form integral part of the Resolution Plan and the Resolution Plan of the Resolution Applicant will be considered by the CoC in the light of such clarifications.*
- c. The Clarifications are irrevocable and binding on the Resolution Applicant and the same can be relied upon the CoC and the Hon'ble INCLT, in the event the Resolution Plan of the Resolution Applicant is considered for approval by the CoC in its commercial wisdom.*
- d. In the event of any contradiction between the proposals contained in the Resolution Plan of the Resolution Applicant and the Clarifications, the contents of the Clarifications shall prevail, and the provisions of the Resolution Plan of the Resolution Applicant will be construed in the light of the Clarifications and explanations as provided and submitted by the Resolution Applicant.”*

16. Clarifications are contained in Annexure 2 which was part of the clarification affidavit. Clause relating to release of the security clarification was provided in Annexure 2, which is at page 263 to 267 of the convenience compilation. It was clarified that transaction is proposed to be discharged on the claim of the unsecured financial creditor against the corporate debtor and the unsecured financial creditor will continue to retain all their rights for

realisation of their debt from the principal debtor/any other guarantor as per terms of the Loan Agreement. It is useful to notice following part:

“Addendum to Additional Clarifications to be provided by the Resolution Applicant

RESOLUTION PLAN SUBMITTED BY SA INFRASTRUCTURE CONSULTANTS PRIVATE LIMITED

IN CORPORATE INSOLVENCY RESOLUTION PROCESS OF ERA INFRA ENGINEERING LIMITED

1.	Clauses/Part of the Resolution Plan	Contents of Clause/Provisions	Clarifications required/provided by the Resolution Applicant	Addendum to the Additional Clarification sought
				<i>It is clarified that the steps as mentioned above is not intended to cause any effect on the obligations of the guarantors/personal guarantors for the debt of the Corporate Debtor, or cause any restriction on the rights of the secured Financial Creditors on any other securities provided by third parties as additional collateral for the debt of the Corporate Debtor in any manner whatsoever.</i> <i>Please note that these figures are approximate and might change slightly at the stage of finalisation of the Definitive Documents.</i>

				<i>It is clarified that 100% of the balance Admitted Unsecured Financial Debt (which are all in the nature of liabilities on account of Corporate Guarantees will be converted into 1% common equity of the Company and issued to the unsecured Financial Creditors in the ratio of their Admitted Unsecured Debt.</i> <i>It is also clarified that this transaction is proposed to be a discharge on the Claims of the unsecured Financial Creditors against the Corporate Debtor. The unsecured Financial Creditors will continue to retain all their rights for realization of their Debts from the principal debtor/any other guarantor as per the terms of the loan agreements.</i>
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17. The claim which was filed by the lenders in the CIRP of the appellant *qua* the SPV, HHPL was towards the shortfall undertaking. The appellant EIEL who had given sponsors undertaking was liable to pay as per shortfall undertaking, hence the claim was filed against the EIEL by the lenders towards the shortfall undertaking. By approval of the resolution plan, the unsecured debt of the lenders has to be held to be satisfied but the said

satisfaction shall be with respect to the EIEL not any debt which was owed to lenders by SPV. The debt of lenders against the SPV, HHPL was based on separate Term Loan Agreement and was secured debt in view of the security documents mentioned in the Loan Agreement. The debt owed by HHPL to the lenders arising out of Term Loan Agreements cannot be treated to have been extinguished by approval of resolution plan of EIEL.

18. The submission which has been pressed by the appellant that in view of the approval of the resolution of EIEL, where claim of lenders which relates to HHPL has also been dealt with the entire debt shall be eclipsed and there was no enforceable debt against HHPL to initiate Section 7 application cannot be accepted. The debt owed by EIEL to the lenders arising out of shortfall undertaking given by sponsors to the lenders of HHPL and the debt owed by the HHPL to the lenders arising out of separate Term Loan Agreements are two different debt. The clauses of the resolution plan cannot be read to mean that it has extinguished the debt of the lenders *qua* the HHPL by virtue of the approval of the resolution plan of EIEL. One more submission advanced by the appellant needs to be noticed. Learned counsel for the appellant submits that an Agreement dated 05.09.2025 was entered between EIEL, assenting secured financial creditor, assenting unsecured financial creditor and SRA where arbitral proceeds mentioned in Schedule II were dealt with where it was agreed to pursue all arbitration proceedings by the resolution applicant and the company. In Schedule II HHPL is mentioned at item No. 48. Submission is that when arbitral proceeds from HHPL are to be distributed as per resolution plan, initiation of CIRP against the HHPL shall frustrate the

implementation of the plan. Paragraph 2.2 of the Arbitral Proceeds Agreement is as follows:

“2.2 The Company hereby agrees and undertakes that, upon receipt of any Arbitral Proceeds, whether before or after the Closing Date, it shall promptly transfer such proceeds to the Assenting Financial Creditors in the following percentages:

2.2.1 Secured Creditors

<i>Gross Proceeds received from Arbitral Awards (INR Crores)</i>	<i>% Proposed to be shared</i>
<i>Upto 450</i>	<i>84%</i>
<i>>450 – 1500</i>	<i>40%</i>
<i>>1500-2500</i>	<i>50%</i>
<i>>2500-3500</i>	<i>55%</i>
<i>>3500</i>	<i>65%</i>

2.2.2 Unsecured Creditors

<i>Gross Proceeds received from Arbitral Awards (INR Crores)</i>	<i>% Proposed to be shared</i>
<i>>3000</i>	<i>10%</i>

19. When we look into the above Agreement at best which mentions that 10% arbitral proceed shall be shared entitlement of unsecured creditors, the said Agreement in no manner prohibit the financial creditor to exercise their statutory rights under Section 7 when a default is committed by HHPL to whom the lenders have advanced Term Loan I, Term Loan II & Term Loan III by separate Rupee Term Loan Agreement. We thus are not persuaded to accept the submission of the appellant that admission of Section 7 application against the HHPL shall make the resolution plan of EEIL unimplementable. The rights of the financial creditor under Section 7 to proceed against the principal borrower and the corporate guarantor are separate and independent rights, which rights can be exercised by the financial creditor without any kind of fetter from the approval of the resolution plan of the EIEL. Initiation

of Section 7 application against the corporate guarantor in respect to the corporate guarantee dated 29.06.2016 given by corporate guarantor i.e., EIL to the Bank of India is an admitted fact after invocation of the guarantee the proceedings have been initiated, in which we do not find any fetter. It is also on the record that the principal borrower in its Balance Sheet 2019-2020, 2020-2021 & 2021-2022 has acknowledged the debt of lenders.

20. We thus are of the view that the debt of lenders towards principal borrower and the corporate guarantor shall not be eclipsed by approval of the resolution plan of the appellant be order dated 11.06.2024 passed by the adjudicating authority. Relevant clauses of the resolution plan and clarification affidavit given by the SRA we have already noticed which clearly indicate that the debt of unsecured financial creditor with respect to HHPL was not to be extinguished with and financial creditors were fully entitled to proceed. In the clarification affidavit (Annexure – 2) we had extracted the following statement “that unsecured financial creditor will continue to retain all their rights for realisation of their debts from the principal debtor/any other guarantor as per the terms of Loan Agreement”. The above clarification clearly dispels all doubts regarding entitlement of the financial creditor to proceed against the principal borrower and guarantor despite of the approval of the resolution plan in the CIRP of EIEL.

21. One more submission which has been advanced by the counsel for the respondent is that appellant has no locus to file the appeal, they being only the shareholder of the principal borrower. Learned counsel for the respondent in support of his submissions has relied on the judgments of this Tribunal in

‘Peninsula Holdings & Investments Pvt. Ltd.’ Vs. ‘JM Financial Credit Solutions Ltd. & Ors.’ in [Comp. App. (AT) (Ins.) No.1393/2025], in ***‘Nirej Vadakkedathu Paul and Ors.’ Vs. ‘Sunstar Hotels and Estates Private Limited and Anr.’*** reported in [2023 SCC OnLine NCLAT 102], in ***‘Park Energy Pvt. Ltd.’ Vs. ‘State Bank of India & Ors.’*** in [Comp. App. (AT) (CH) (Ins.) No.62/2023] and also in ***‘Anant Kajare’ Vs. ‘Eknath Aher & Anr.’*** reported in [2017 SCC OnLine NCLAT 434]. The present is the case where appeal filed by the appellant challenging the order initiating Section 7 application against the principal borrower which is subsidiary company of the appellant is not based only on the challenge that appellant is shareholder and holding company of the corporate debtor rather the challenge has been made on the ground that debt of lenders which were part of the CIRP of the EIEL had extinguished on account of the approval of the resolution plan and initiation of CIRP against the principal borrower and corporate debtor shall cause hinderance in the implementation of the resolution plan of EIEL, the above ground raised by the appellant were sufficient to hold that appellant are person aggrieved within meaning of Section 61 of the IBC to enable them to have locus to file an appeal under Section 61 against the order admitting Section 7 application.

22. Learned counsel for the appellant has also contended that adjudicating authority committed error in rejecting INV.P. No.59/2025 & INV.P. No.60/2025 due to which, the relevant facts could not be pleaded and placed before the adjudicating authority. In the proceeding under Section 7 initiated against the principal borrower and the corporate guarantor, the debt of the financial creditor against the principal borrower and corporate guarantor fully
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proved and adjudicating authority having find that default has been committed in payment of the debt proceeded to admit Section 7 application. The corporate debtor has appeared and opposed the application and submission made by the corporate debtor has already been noticed by the adjudicating authority in the impugned order. Adjudicating authority has rightly placed reliance on the judgement of the Hon'ble Supreme Court in '**M. Suresh Kumar Reddy' Vs. 'Canara Bank & Ors.'**' reported in [(2023) 8 SCC 387], where Hon'ble Supreme Court in paragraph 11 of the judgment has laid down following:

“11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. “Default” is defined under sub-section (12) of Section 3 IBC which reads thus:

“3. Definitions.—In this Code, unless the context otherwise requires—

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;”

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.”

23. We thus are of the view that the corporate debtor was before the adjudicating authority and was heard, no error has been committed by the adjudicating authority in rejecting the intervention petition filed by the

appellant. In any view of the matter, we have entertained the appeal filed by the appellant under Section 61 challenging the order initiating Section 7 application and has considered the submission raised by the appellant on merits. In the appeal no other points have been pressed on behalf of the appellant.

24. We do not find any error in the order passed by the adjudicating authority admitting Section 7 application against the principal borrower and the corporate guarantor and in rejecting intervention petition filed by the appellant in CIRP of the principal borrower of the corporate debtor.

In result all the appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

12th March, 2026

himanshu