NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1

C.P. (IB)/1361(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **20.07.2026**

NAME OF THE PARTIES**:** **Union Bank of India**

V/s

N Kumar Retails & Properties 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/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

//Sumant//

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.1361/MB/2025

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

IN THE MATTER OF:

UNION BANK OF INDIA
Registered office: Ground Floor, 239,
Vidhan Bhavan Marg, Nariman Point,
Mumbai, Maharashtra – 400021

Local office: Asset Recovery Branch,
Shop No. F-1/2/3/6/7/8,
Govinda Gourkhede Complex,
Khasra No. 91/1, Seminary Hills,
Nagpur - 440006

…Financial Creditor/Applicant

V/s

N. KUMAR RETAILS AND PROPERTIES PRIVATE LIMITED
[CIN: U45102MH2001PTC131615]
1st Floor B, Poonam Chambers, Byramji Town,
Chhindwara Road,
Nagpur – 440013
Maharashtra, India

...Corporate Debtor

Pronounced: 20.07.2026

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

Appearances: Hybrid

Financial Creditor: Adv. Mr. Viraj Parikh i/b Adv. Aditya Dubey.

Corporate Debtor: Adv. Mr. Rayhaan Ahmed (CD)

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This is an Application bearing C.P. (IB) No.1361/MB/2025 filed on 30.09.2025 by Union Bank of India, 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") by Mr. Rohit Pradeep Gulkari, Branch Manager *vide* Power of Attorney dated 27.04.2015 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of N. Kumar Retails and Properties Private Limited, the Corporate Debtor (CD)**.**

1.2 The Applicant is a banking company incorporated under the Companies Act, 1956. The CD is registered under Companies Act, 1956 and had requested a credit facility from the Applicant.

1.3 It is observed that as per Part III, the Applicant has proposed the name of an IRP, Mrs. Megha Agrawal along with her consent in FORM-2 stating that no disciplinary actions are pending against the propose IRP. The Applicant has also placed on record the AFA in Form B valid till 31.12.2025. On perusal of the IBBI Website, it is observed that the AFA of the proposed IRP is valid till 30.06.2027.

1.4 As per Part-IV of the Application the total amount claimed to be in default is Rs. 6,05,34,209.34/- (Six Crore Five Lakh Thirty-Four Thousand Two Hundred Nine Thirty-Four Paisa only) which includes Principal sum amounting Rs. 4,65,96,652.34/-

(Rupees Four Crore Sixty-Five Lakhs Ninety-Six Thousand Six Hundred Fifty-Two and Thirty-Four Paisa only) and interest amounting to Rs. 1,39,37,557.00/- (Rupees One Crore Thirty-Nine Lakh Thirty-Seven Thousand Five Hundred Fifty-Seven Only).

1.5 The date of default is mentioned as 27.03.2023 when the Corporate Debtor first defaulted in making the repayment towards the loan.

1.6 The Applicant has relied on the following documents:

i. A copy of the sanction letter dated 15th September 2012.

ii. Letter of Guarantee dated 20th September 2012.

iii. Hypothecation Agreement of Goods and Debts dated 20th September 2012.

iv. Memorandum of Deposit of Title Deeds dated 20th September 2012.

v. Agreement on Rate of Interest dated 20th September 2012.

vi. Copies of Audited Financial Statement and/or the Boards Report of the Corporate Debtor for the Financial Year 2013-2014 and 2014-2015.

vii. Copy of Sanction letter dated 01st March 2018 enhancing the Working Capital Facility of the Corporate Debtor.

viii. Copies of Supplementary Agreement to SD-06 Hypothecation Agreement, Letter of Continuity executed between the Corporate Debtor and Financial Creditor dated 01st March 2018.

ix. Copy of NPA Certificate.

x. Copy of Demand Notice under SARFAESI dated 18th April 2023.

xi. Copy of the Original Application filed by Financial Creditor against the Corporate Debtor and its guarantors before Ld. DRT, Nagpur, without annexures.

xii. Copy of Enforcement Notice under section 13(2)

xiii. Possession Notice dated 20th August 2024 under SARFAESI Act, 2002 issued by the Financial Creditor against the Corporate Debtor.

xiv. Copy of Order dated 05th March 2025 passed by the Ld. Debt Recovery Tribunal, Nagpur Bench along with pursis for compliance of the order and payment receipt.

xv. Copy of OTS proposal dated 06th March 2025 submitted by the Corporate Debtor.

xvi. Copy of the OTS rejection letter dated 10th March 2025 issued by the Financial Creditor.

xvii. Copy of the Statement of Account (SOA) as on 20.08.2025 for Account bearing No. 458105040000241.

xviii. Certificate under the Bankers Book of Evidence Act, 1981.

xix. Copy of NeSL Record of Default.

2. AVERMENTS OF THE APPLICANT

2.1 The Total amount of the Debt granted by the Applicant under the Working Capital Loan Facilities of Rs. 4,65,00,000/- (Rupees Four Crore Sixty-Five Lakhs Only) is as per the details given below:

Account No.	Facility	Amount Sanctioned	Date of Disbursement
458105040000241	Working Capital Facility	3,00,00,000	21.09.2012
	Enhanced Working Capital Facility	4,65,00,000	01.03.2018

2.2 It is stated that N. Kumar Retails and Properties Private Limited , a Private Limited Company (hereinafter referred to as "the borrower/ Corporate Debtor"), had approached Union Bank of India ("Financial Creditor / Petitioner") for grant of fund based working capital facilities of Rs. 3,00,00,000/- (Rupees Three crores only) 10th September 2012. The said financial assistance of Rs. 3,00,00,000/- (Rupees Three crores only) was granted by Financial Creditor vide sanction letter dated 15th September 2012.

2.3 It is stated that in order to secure the financial facilities, the Corporate Debtor executed Letter of Guarantee, Hypothecation Agreement of Goods and Debts, Memorandum of Deposit of Title Deeds, Mortgage Deed, Agreement on Rate of Interest and other security documents dated 20th September 2012 in favour of the Financial Creditor.

2.4 It is stated that the Corporate Debtor, in its Audited Financial Statement and/or the Board Reports for the Financial Year 2013-2014 and 2014-2015 has acknowledged the debt due by them from the Financial Creditor.

2.5 It is stated that on the request of the Corporate Debtor, the Financial Creditor *vide* another Sanction Letter dated 01st March 2018, enhanced the Working Capital Facility to Rs. 4,65,00,000/- (Rupees Four Crores Sixty-Five Lakh only). In accordance with the same, a Supplementary Agreement to SD-06 Hypothecation Agreement [SD-06(S)], and Letter of Continuity were executed between the parties. Pursuant to the same, a charge bearing Charge ID 10382238, was suitably modified.

2.6 It is stated that, however, after availing the said Credit Facilities, the Corporate Debtor failed to adhere to the terms and conditions of the sanction of aforesaid Credit Facilities and neglected to make the payment to the Financial Creditor. Admittedly, from 23rd November 2022, the Corporate Debtor defaulted in repaying the outstanding dues/interests to the Financial Creditor.

2.7 It is stated that, due the abovementioned non-payment by the Corporate Debtor, the loan accounts of the Corporate Debtor were declared as NPA on 27th March 2023.

2.8 It is stated that, thereafter, the Financial Creditor also issued a notice under section 13(2) of the SARFAESI Act on 18th April 2023, calling upon the Corporate Debtor to clear the outstanding dues. However, despite the said notices the Corporate Debtor failed to repay the dues.

2.9 It is stated that, consequent to the failure on part of the Corporate Debtor to pay the outstanding dues, Financial Creditor on 21st April 2023 filed an O.A. No. 467 of 2023 before the Debt Recovery Tribunal, Nagpur, against the Corporate Debtor, its Directors,who are the Personal Guarantors of the Corporate Debtor, under the provisions of Section 19 of The Recovery of Debts Due to Banks and Bankruptcy Act, 1993 demanding the Corporate Debtor to pay the outstanding dues amounting to Rs. 4,83,00,000/-.

2.10 It is stated that pursuant to the Demand Notice dated 18th April 2023 issued under Section 13(2) of the SARFAESI Act, proceedings for possession of the secured mortgaged asset of the Corporate Debtor were also initiated against the Corporate Debtor by the Financial Creditor, whereby, a possession notice dated 20th August 2024 was issued by the Financial Creditor.

2.11 It is stated that the Corporate Debtor challenging the said proceedings filed a Securitization Application under the provisions of Section 17 of the SARFAESI Act, bearing S.A. No. 24 of 2025, which was listed for hearing before the Ld. DRT, Nagpur Bench on 04th March 2025. During the course of the said proceedings, the Corporate Debtor not only admitted their liability but also offered to submit an OTS against the outstanding dues. Accordingly, on 06th March 2025, the Corporate

Debtor herein submitted their OTS proposal for an amount of Rs. 4,00,00,000/- (Rupees Four Crores Only.

2.12 It is stated that the Financial Creditor respondent to the Corporate Debtor's OTS proposal and rejected the same by way of their letter dated 10th March 2025, since the security value of the mortgaged asset was more than the outstanding value. Accordingly, the Financial Creditor requested the Corporate Debtor to enhance their offer.

2.13 It is stated that, despite the letter dated 10th March 2025, the Corporate Debtor has not only failed to enhance its settlement offer but also failed to clear its outstanding dues continuing to be in default. Therefore, the Financial Creditor is constrained to approach this Hon'ble Tribunal.

3. <u>WRITTEN SUBMISSIONS FILED BY THE APPLICANT.</u>

3.1 The Applicant has filed the Written Submissions which are dated 01.07.2026 reiterating the facts as per the Application. The Applicant has relied upon the following citations:

1. *In Innoventive Industries Ltd. vs. ICICI Bank.*
2. *In Swiss Ribbons vs. Union of India.*
3. *In E.S. Krishnamurthy & Ors. vs. Bharath Hi Tech Builders Pvt. Ltd., (2022) 3 SCC 161.*
4. *In Vijay Kumar Singhania vs. Bank of Baroda & Ors.*

4. <u>CLOSURE OF RIGHT TO FILE REPLY OF THE CORPORATE DEBTOR</u>

4.1 Ld. Advocate for the Respondent, Mr. Radhe Agarwal, first made representation through Video conferencing on 09.02.2026 and waived the issuance of notice. He stated that a copy of the Application be served upon him by the Applicant to which Ld. Counsel appearing on behalf of the Applicant undertook to serve by the end of the day by way of an e-mail. He further sought 10 days' time for filing of the reply, which was allowed by the Bench and the matter was relisted on the next date.

4.2 On the next date, on 02.04.2026, when the matter was taken up, no representation was made by the Applicant or the Respondent. The perusal of the DMS revealed no Reply was filed by the Respondent. However, as a last and final opportunity, the matter was relisted again in the interest of justice for the Applicant to appear and pursue the Application failing which suitable orders will be passed.

4.3 Thereafter, on 08.05.2026, the Applicant's Counsel made representation. However, there was again no representation made by the Respondent's Counsel. Further, it was observed by the Bench that, till date, no Vakalatnama or any Reply has been filed by the Respondent's Counsel. Hence, at the request of Ld. Counsel appearing on behalf of the Applicant, a fresh notice was issued and the Respondent was once again directed to file Reply within 10 days from the date of receipt of the fresh notice.

4.4 It was also observed by the Bench that Advocate Mr. Radhe Agarwal, who firstly made representation in the matter, has not filed any Vakalatnama/Reply pursuant to the order dated 09.02.2026 nor attended the further hearings till date. Hence, a notice was issued to Mr. Radhe Agarwal to appear before the Bench at the next date of hearing and place his Vakalatnama on record in the matter and was further directed to file his say in regard to his conduct in the matter.

4.5 After issuance of fresh notice, the matter was listed for hearing/appearance on 19.06.2026. One, Advocate Mr. Rayhaan Ahmed made representation for the Respondent and again sought time to file its Reply. On that date, it was observed by the Bench that, till date, no reply or Vakalatnama had been filed by the Respondent. Considering the previous conduct of the Respondent of non-compliance of the orders dated 09.02.2026 and 08.05.2026, the right to file Reply of the Respondent was closed.

4.6 Advocate Mr. Radhe Agarwal, who has made representation first on 09.02.2026 in the matter, appeared again through Video conferencing without filing any Vakalatnama and stated that an Affidavit was attempted to be filed to clarify his previous conduct regarding non-representation and non-compliance of the orders, but the same could not be uploaded on the DMS due to some technical issues and he undertook to e-file the Affidavit within a further period of 3 days. He further offered his apology for his conduct. Hence, the request to file the said Affidavit was allowed by this Bench. He also undertook to share the copy of the said Affidavit with the Ld. Counsel for the Applicant. Further, both parties were directed to file short synopsis of their arguments within a period of 10 days and the matter was relisted on the next date.

4.7 Thereafter, on 03.07.2026, the matter was taken up for hearing and Ld. Counsel, Mr. Viraj Parikh appearing on behalf the Applicant was heard with regard to the facts of the matter.

4.8 Ld. Counsel, Mr. Reyhaan Ahmed, made representation on behalf of the Respondent. However, till date, no Vakalatnama authorizing him to represent the Corporate Debtor was produced. Hence, his representation was not taken on record.

4.9 The matter was relisted on 06.07.2026 for hearing on the conduct of Mr. Radhe Agarwal who stated that he will e-file the said Affidavit or in the alternative will personally appear on the said date with a physical copy of the same. The matter was relisted on his request for the said limited purpose on 06.07.2026.

4.10 Thereafter, on 06.07.2026, Advocate Radhe Agarwal, physically made representation and tendered physical copy of the Affidavit dated 18.06.2026 *vide* which he offered his unconditional apology in regard to his previous conduct. The said Affidavit was taken on record along with his unconditional apology.

4.11 Advocate Rayhaan Ahmed also pressed his Vakalatnama on record and states that there is no Application filed by his client, i.e. the Corporate Debtor, for recall of order dated 19.06.2026 *vide* which the right of the Respondent to file Reply was closed. He further sought leave of this Bench for filing his written submission within a further period of 3 days and requested that the written submissions may kindly be considered while passing of the Final Order. The request was allowed and the matter was reserved for order by this Bench. Written Submissions were filed by the Respondent on 09.07.2026.

5. <u>WRITTEN SUBMISSIONS FILED BY THE RESPONDENT</u>

5.1. It is submitted that, at the first instance, the Financial Creditor has suppressed the facts that the Corporate Debtor had already challenged the SARFAESI Proceedings by filling Securitization Application No. 24 of 2025 before the Ld. Debt Recovery Tribunal, Nagpur, ("DRT, Nagpur") wherein the validity of the demand notice, possession proceedings, security interest and quantum of liability have been disputed and is pending before Ld. DRT, Nagpur. Further Ld. DRT, Nagpur was pleased to grant a conditional stay on the proposed taking of possession of the secured asset, subject to the Corporate Debtor depositing Rs. 50,00,000/-. The Corporate Debtor duly complied with the said condition by depositing the aforesaid amount, pursuant to which the interim protection against taking possession remained operative. The said Securitisation Application is presently pending adjudication before the Ld. DRT, Nagpur.

5.2. It is submitted that the Corporate Debtor has never admitted the amount claimed by the Financial Creditor, i.e., Rs. 6,05,34,209.34/- (subject to correction). Since the year 2014, the Corporate Debtor has consistently addressed representations to the Financial

Creditor raising objections regarding the excessive charging of interest, wrongful debit entries, the refusal to reduce the contractual rate of interest, the refusal to enhance the working capital facilities, and the failure to consider the Corporate Debtor's revival proposals. It is further submitted that the Financial Creditor has also wrongly debited a sum of Rs. 1.60 crore to the loan account of the Corporate Debtor. Accordingly, the computation of the alleged outstanding dues has been under continuous dispute, and the amount claimed by the Financial Creditor has never been admitted by the Corporate Debtor.

5.3. It is submitted that the Financial Creditor has wrongly alleged that the Corporate Debtor committed default and that the account was rightly classified as Non-Performing Asset. The Corporate Debtor has consistently pleaded that the account did not satisfy the requirements for such classification and that the declaration of NPA itself is illegal.

5.4. It is submitted that the demand notice issued under Section 13(2) of the SARFAESI Act was itself defective as it failed to disclose the principal amount, calculation of interest, applicable rate of interest, complete statement of accounts and particulars of the alleged secured debt. The mandatory requirements of Sections 13(2) and 13(3A) of the SARFAESI Act were not complied with before taking measures under Section 13(4).

5.5. It is submitted that the Financial Creditor has further failed to consider repeated requests of the Corporate Debtor seeking restructuring of the account, reduction in the rate of interest, enhancement of the Cash Credit facility and conversion of the Cash Credit account into a Term Loan and had such requests been considered in accordance with RBI guidelines, the present financial stress could have been avoided.

5.6. It is submitted that the Financial Creditor's reliance upon the One Time Settlement proposal is wholly misconceived. The OTS proposal was merely a commercial proposal made to amicably resolve the dispute and cannot be construed as an unequivocal admission of the alleged liability or waiver of the Corporate Debtor's legal objections, all of which continue to remain pending before the competent forum.

5.7. It is submitted that the Corporate Debtor has also specifically disputed the validity of the alleged security interest and contended that the property sought to be enforced is not a valid secured asset within the meaning of the SARFAESI Act. The legality of the mortgage and enforcement proceedings is therefore itself under challenge.

5.8. It is submitted that the financial difficulties of the Corporate Debtor arose due to adverse market conditions, recession, freezing of the account by SEBI, denial of further financial assistance and failure of the Financial Creditor to extend restructuring or rehabilitation measures. These circumstances were repeatedly brought to the notice of the Financial Creditor but were completely ignored.

5.9. It is submitted that the Corporate Debtor has no realizable business assets remaining. The only immovable property/space available with the Corporate Debtor has been held by the Hon'ble High Court, Nagpur Bench, to constitute a parking space and is therefore not available to the Corporate Debtor as a commercial asset for carrying on its business or for generating revenue. The Financial Creditor has failed to disclose this material fact while seeking initiation of the present proceedings. In the absence of any viable business assets, the present petition would not serve the objective of resolution under the Insolvency and Bankruptcy Code, 2016.

5.10. It is submitted that the present Company Petition is barred by limitation and is liable to be dismissed at the threshold.

5.11. It is submitted that, in the present case, the Financial Creditor has simultaneously pursued recovery proceedings before the DRT, invoked SARFAESI measures and thereafter instituted the present Section 7 proceedings. The said amount of claim of Rs. 6,05,34,209.34/- is still disputed and approx. Rs. 10,00,00,000/- is already paid against the facility of Rs. 4,78,17,893.69/-. The Corporate Debtor has consistently disputed the computation of dues, sought restructuring and challenged the recovery proceedings before the Ld. DRT, Nagpur and until the amount is not decided the CIRP application cannot be admitted.

5.12. It is submitted that the Financial Creditor has simultaneously invoked remedies before the DRT, initiated measures under the SARFAESI Act and thereafter instituted the present proceedings under Section 7 of the IBC. The invocation of multiple proceedings indicates that the present petition has been filed primarily as a recovery mechanism rather than for resolution of insolvency. It is settled that the provisions of the IBC cannot be invoked merely to pressurize a debtor into payment.

6. <u>ANALYSIS AND FINDINGS</u>

6.1 We have heard the Counsel for the Applicant and have perused the records as placed before us. Our findings in the matter are as under: -

6.2 The Applicant in the present Application is claiming a total amount of Rs. 6,05,34,209.34/- (Six Crore Five Lakh Thirty-Four Thousand Two Hundred Nine Thirty-Four Paisa only). Initially, the credit facilities were sanctioned and disbursed in the year of 2012 and that they were last enhanced on 01.03.2018. The Applicant has duly registered the charge with the MCA.

6.3 It is stated that the Respondent defaulted on 23.11.2022 and the account of the Corporate Debtor was declared NPA on 27.03.2023. SARFAESI notice u/s 13(2) of the SARFAESI Act was issued by the Applicant on 18.04.2023 and O.A. No. 467 of 2023 was filed before the Hon'ble DRT, Nagpur. During the proceedings before the Hon'ble DRT, the Corporate Debtor admitted its liability and offered an OTS *vide* letter dated 06.03.2025, for a sum of Rs. 4 Crores, which was rejected by the Applicant.

6.4 The right to file reply of the Respondent was closed for the reasons as stated in para 4 of this order, above *vide* the order dated 19.06.2026.

6.5 The Respondent has since filed its Written Submissions. The objections raised in the Written Submissions are as under:

a. The Applicant has charged excessive interest, has made wrongful debit entries of Rs. 1.60 Crores , has refused rate of interest and has not enhanced the working capital facilities. The account of the Corporate Debtor was wrongly classified NPA

b. Repeated requests of the Corporate Debtor seeking re-structuring were not granted.

c. OTS is not an acknowledgment and does not extends the limitation.

d. Financial difficulties of the Corporate Debtor arose due to adverse market conditions, recession, freezing of the account by the SEBI, denial of further financial assistance and failure of the Financial Creditor to extend restructuring or rehabilitation measures.

e. Applicant is pursuing multiple remedies being the present Application and recovery proceedings before the DRT and the present petition is being used as a recovery mechanism.

f. Computation of outstanding dues is disputed.

g. Legality of mortgage and enforcement proceedings are under challenge before Ld. DRT Nagpur.

h. Application is barred by limitation.

i. The only immovable property owned by the CD is held by the Hon'ble High Court Nagpur Bench and that in absence any viable business assets , the objective of resolution under IBC will not be achieved.

6.6 The Applicant has placed before us the certificate under the Bankers' Book Evidence Act, 1891 along with the copy of the Statement of Account and NPA certificate. Perusal of the same reveals that the Corporate Debtor is in default of an amount exceeding to Rs. 1 Crore as prescribed u/s. 4 of IBC, 2016. The date of default is mentioned as 27.03.2023.

6.7 It is stated that the subsequent OTS offer dated 06.03.2025 further enhanced the limitation. We agree with the Ld. Counsel for the Applicant and the citations given by them. Accordingly, the OTS offer, further enhanced the limitation to 2028.

6.8 At this moment this Tribunal has also relied on the judgement of Hon'ble NCLAT in Dinesh G Jaiswal vs. Punjab National Bank, Asset Recovery Branch and Anr. (2022) ibclaw.in 802 NCLAT Wherein it has been held that OTS and financial account statements constitute valid acknowledgment of debt and extends limitation period. The relevant abstract of the judgement is produced below:-

> *"26. In view of the law laid down by the Hon'ble Supreme Court in ITC Limited (supra), we hold that the offer of one Time Settlement (OTS) made by the Corporate Debtor to the Financial Creditor constitutes an acknowledgement of liability within the meaning of section 18 of the Limitation Act, 1963. The Judgment of the Hon'ble Allahabad High Court in Shibcharan Das (supra) must be held to be inapplicable in view of the judgment of the Hon'ble Supreme Court in ITC Limited. Further the order of the Hon'ble NCLAT discussed in previous paras directly relates to this matter and can be a continuous cause of action as well. 1 (2021) 10 SCC 330 2 2022 SCC OnLine NCLAT 4237 4*
>
> *27. In the light of the above discussion and the fact that the Corporate Debtor in its financial statements for the F.Y. 2014-2015 and F.Y. 2015-2016 filed with the Ministry of Corporate Affairs acknowledges the liability towards the Financial*

Creditor; and also, in its letter dated 23.02.2017 submitted a proposal for one-time settlement of dues of the Financial Creditor, IDBI Bank Limited and Bank of India, which was also revised on 15.09.2018.

28.Therefore, we hold that the petition filed by the Financial Creditor is within limitation.

6.9 Considering the facts of this matter and applying the decision of the Hon'ble NCLAT in Dinesh G Jaiswal (Supra), we are of the view that the date of default was 23.03.2023 and thereafter through OTS dated 06.03.2025 the limitation for filing this Application was extended by further 3 years ending in 2028.Therefore the present Application being filed on 10.12.2025 is well within limitation period.

6.10 As regards the objection of the Corporate Debtor of pursuing multiple remedies under the SARFAESI Act and that under IBC, we rely upon the judgment of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 854 of 2019 in Punjab National Bank vs. M/s. Vindhya Cereals Pvt. Ltd., wherein paragraph nos. 8 and 9 of the order of Hon'ble Appellate Authority has held as under:

"8. This Tribunal in the case of Company Appeal (AT) (Ins) No. 323/2019 ***(Neeraj Jain Vs. Yes Bank Ltd. & Anr.)*** *decided on 10.04.2019 held that Section 7 being an independent proceeding is nothing to do with the pendency of Criminal Case relating to misappropriation of funds. This Tribunal in the case of App. (AT) (Ins) No. 1021/2019 (Karan Goeal Vs. M/s. Pashupati Jewellers & Ors.) decided on 01.10.2019 held that merely because suit has been filed by the Financial Creditor and pending cannot be ground to reject the application under Section 7 of the I&B Code.*

9. In the light of above pronouncement, we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-

obstante clause of the I&B Code will prevail over any other law for the time being in force."

6.11 With respect to the contentions raised by the Corporate Debtor regarding charging of excessive interest and wrongful debit entries to the tune of ₹1.60 Crore, thereby disputing the total debt quantum, this Tribunal finds the same to be legally untenable. It is well-settled that even if the disputed amount of ₹1.60 Crore is excluded from the total default amount, the residual defaulted sum comfortably satisfies the statutory threshold limit of ₹1 Crore mandated under Section 4 of the Code for initiating the Corporate Insolvency Resolution Process (CIRP). Furthermore, the Applicant has placed on record a valid certificate under the Bankers' Books Evidence Act, 1891, along with a certified copy of the Statement of Account and the Non-Performing Asset (NPA) certificate. A perusal of these documents reveals that the Corporate Debtor remains in default of a financial debt exceeding the threshold of ₹1 Crore.

6.12 The contentions raised by the Corporate Debtor challenging the validity of the mortgage before the Debt Recovery Tribunal (DRT) is untenable as pendency of actions under the SARFAESI Act or actions under RDB Act does not create obstruction for filing an Application under Section 7 of IBC.

6.13 With regard to the Corporate Debtor's (CD) assertion that its sole immovable property is currently subject to the directions of the Hon'ble Bombay High Court, and that the core objective of the Insolvency and Bankruptcy Code, 2016 (the Code) cannot be achieved in the absence of viable business assets, this Tribunal finds such contentions untenable. It is settled law that the decision to resolve a company or send it into liquidation falls squarely within the ambit of the commercial wisdom of the Committee of Creditors (CoC). At the pre-admission stage, the statutory mandate of this Adjudicating Authority under the Code is strictly confined to determining whether a financial debt is due and payable, and whether a default has occurred.

Consequently, we are of the considered view that the Financial Creditor has placed sufficient, cogent, and incontrovertible evidence on record to substantiate both the existence of a financial debt and the Corporate Debtor's default in the repayment thereof.

6.14 Furthermore, the Corporate Debtor, in its written submissions, has itself explicitly averred that it encountered severe financial distress due to adverse market conditions and the freezing of its bank accounts by the Securities and Exchange Board of India (SEBI). By its own admission, therefore, the Corporate Debtor does not dispute the occurrence or existence of the default. This is further fortified by the National E-Governance Services Limited (NeSL) Form D brought on record by the Applicant, wherein the status of the default stands categorically recorded as **"AUTHENTICATED".**

6.15 This Tribunal also 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. <u>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.</u> 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. <u>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</u>

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)

6.16 To summarize the above judgment, we observe as under:

a. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process must 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.

b. 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.

c. 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).

d. The Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt.

e. 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.

6.17 In view of the above judgment, i.e., Power Trust, we restrict scope of our enquiry at this stage merely to the existence of debt and default exceeding the threshold of Rs.1 Crore, which Applicant has been able to establish based on the documents placed on record; and the other objections raised by the Corporate Debtor, in our opinion are not relevant for adjudication of this Application and are therefore, rejected.

6.18 The Applicant has proposed the name of Mrs. Megha Agrawal to act as the Interim Resolution Profession (IRP) and has given his declaration in Form 2, *inter alia*, stating that no disciplinary proceeding is pending against her. The Applicant has provided his valid AFA in Form B valid till 30.06.2027.

6.19 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 Corporate Debtor 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 Corporate Debtor, which remained unpaid. The debt so owed by the Corporate Debtor to the Applicant falls within the definition of “financial debt” under Section 5(8) of the Code.

6.20 In view of the above, we find that requisite conditions necessary to trigger CIRP in respect of the Corporate Debtor are fulfilled, the Application is complete as all the relevant documents have been attached by the Applicant along with the Application. As a result, the matter deserves to be admitted under Section 7 of the Code.

6.21 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.1361/MB/2025 filed under Section 7 of the Code by Union Bank of India, the Applicant, for initiating CIRP in respect of **N. Kumar Retails and Properties Private Limited**, 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 **Mrs. Megha Agrawal** a registered Insolvency Professional having Registration Number **IBBI/IPA-001/IP-P-01456/2018 -2019/12272** and e-mail address ip.meghaagrawal@gmail.com having valid Authorisation for Assignment up to 30.06.2027 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 within a period of 7 days from the date of this order.

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/-	**Sd/-**
NILESH SHARMA **MEMBER (JUDICIAL)**	**SAMEER KAKAR** **MEMBER (TECHNICAL)**

//Nidhi//