

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 138/Chd/Hry/2023

**Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

STATE BANK OF INDIA

having its Office at SAMB - 1, Mumbai,
"The Arcade", 2nd Floor, World Trade Centre,
Cuffe Parade, Colaba, Mumbai, Maharashtra - 400 005
through its Authorised Representative, namely, Mr. Rajendra U. Dahat
TAN: MUMB14834B; PAN: AAACS8577K

...PETITIONER / FINANCIAL CREDITOR

VERSUS

SUPREME PANVEL INDAPUR TOLLWAYS PRIVATE LIMITED

having its Registered Office at: 510,
5th Floor, ABW Towers, IFFCO
Chowk, MG Road,
Gurugram, Haryana - 122 002, India
CIN: U45400HR2010PTC043915

...RESPONDENT / CORPORATE DEBTOR

Judgment delivered on: 30.08.2024

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

HON'BLE MR. ASHISH VERMA, MEMBER (TECHNICAL)

Present:

For the Petitioner-Financial Creditor : Mr. Aseem Chaturvedi, Advocate
Mr. Prashant Kumar Kapila, Advocate
Mr. Siddhant Kumar, Advocate
For the Respondent-Corporate Debtor : Mr. Vipul Joshi, Advocate

Per: Mr. Harnam Singh Thakur, Member (Judicial)
Mr. Ashish Verma, Member (Technical)

JUDGMENT

The present petition has been filed by State Bank of India (hereinafter referred to as 'Petitioner/Financial Creditor') through its authorised representative, Mr. Rajendra U. Dahat under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **Supreme Panvel Indapur Tollways Pvt. Ltd.** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Rajendra U. Dahat with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 18.11.2010. The company is having its registered address at IFFCO Chowk, MG Road, Gurugram, Haryana-122002. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-1 of the petition.

3. The brief facts of the petition are submitted as below:-

i. The National Highways Authority of India awarded to the Corporate Debtor, the project of design, engineering, construction, operation and maintenance of four laning of the Panvel - Indapur Section of NH-17 from Panvel to Indapur, Maharashtra ("Project") on a build operate transfer basis. The Corporate Debtor had approached a number of lenders including the petitioner for sanction of a term loan facility of Rs. 9,00,00,00,000 (Rupees Nine Hundred Crores Only) for part financing the Project. Accordingly, a common loan agreement was entered into between the Corporate Debtor, Financial Creditor and other lenders. The default in

payment arose out of the loan advanced by the petitioner and SBP (which now stands merged with the petitioner). The Corporate Debtor had defaulted in respect of its payment obligations under the Loan Agreement on 4 October 2015. The account of the Corporate Debtor was declared as NPA on 1 November 2016. On 16 January 2018 and 22 December 2020, the Corporate Debtor issued another letter to the Financial Creditor admitting its liability. On 14.06.2022 and 29.08.2022, the corporate debtor issued letters to the petitioner indicating its intent to enter into a compromise and one-time settlement with the petitioner and other members of the consortium. On 01.11.2022, the corporate debtor offered a compromise and one-time settlement proposal to the financial creditor. However, no payment has been made. Thereafter, the Financial Creditor on 09.11.2022 issued a loan recall notice to the Corporate Debtor for repaying the outstanding principal along with interest.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs. 610,25,39,513/- (Rupees Six Hundred Ten crores Twenty Five lakhs Thirty Nine thousand Five hundred Thirteen Only) as on 17.04.2023 and date of default is 09.11.2022 i.e. when the corporate debtor failed to clear the outstanding dues in favour of financial creditor upon receipt of the demand/loan recall notice from the Financial Creditor. Copy of Common Loan Agreement dated 30.08.2011 (Annexure-5), notification pertaining to merger of State Bank of Patiala with the Financial Creditor dated 22.02.2017 (Annexure-6), date of disbursement of loans availed by the corporate debtor (Annexure 7), statement of account detailing outstanding debt due by the corporate debtor as on 17.04.2023 (Annexure 8), Balance sheet of corporate debtor for F.Y ending 31.03.2016, 31.03.2017, 31.03.2018, 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022 (Annexure 9 to 15),

letter by corporate debtor admitting its liability for financial dues dated 22.12.2020 and 16.01.2018 (Annexure 16-17), letter by corporate debtor indicating intent to enter into compromise and One Time Settlement dated 14.06.2022 and 29.08.2022 (Annexures 18-19), offer of compromise and One Time Settlement by the corporate debtor dated 01.11.2022 (Annexures 20), loan recall notice by financial creditor financial creditor to corporate debtor dated 09.11.2022 (Annexures 21), sanction letter by financial creditor and State Bank of Patiala to corporate debtor dated 13.06.2011 and 30.07.2011 (Annexures 22), Inter creditor agreement between corporate debtor, Security Trustee and other lenders dated 30.08.2011 (Annexures 23), Lenders' Agent Agreement dated 30.08.2011 (Annexures 24), Escrow Agreement between corporate debtor financial creditor and National Highway Authority of India dated 30.08.2011 (Annexures 25), Security Trustee Agreement between the corporate debtor Lenders Consortium the Financial Creditor and Security Trustee (Annexures 26), letter of corporate guarantee in favour of Security Trustee by Supreme Infrastructure India Limited dated 30.08.2011 (Annexures 27), undertaking by Supreme Infrastructure India limited in favour of Lenders dated 30.08.2011 (Annexures 28), deed of pledge of 51% shares of Supreme Infrastructure India Limited in favour of the Security Trustee dated 15.12.2011 (Annexures 29), three irrevocable Power of Attorneys in favour of the Security Trustee dated 15.12.2011 (Annexures 30), indenture of mortgage executed by corporate debtor in favour of Security Trustee dated 25.10.2011 (Annexures 31), record of default filed with Information Utility (Annexures 32) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. The Affidavits of Service was

filed vide Diary No. 01622/01 dated 22.09.2023. The reply was filed by the respondent-corporate debtor vide Diary No. 01622/2 dated 22.02.2022 wherein it is stated as under:-

5.1. The petition is filed by the Public Sector Bank by misusing this Authority as a recovery forum and no dues have arisen. The respondent was awarded contract by NHAI vide its letter dated 28.10.2010. The concession agreement was entered into a consortium with NHAI on 21.01.2011. The settlement proceedings and mediation proceedings through the Conciliation Committee of Independent Experts of NHAI and the arbitration project under dispute are on-going. There are no dues as the common Loan Agreement under which debt is being claimed by the petitioner has been novated by the tripartite Agreement between the NHAI, the petitioner and the respondent dated 09.11.2016, in the agreement the respondent had to avail One Time Fund Infusion Scheme (OTFIS) which was conveyed vide letter dated 12.08.2016 to respondent for up to Rs. 540 crores less any balance amounts left from undisbursed amount after physical completion of at least 50% of the project highway. The common loan agreement dated 30.08.2011 stood novated by the OTFIS Agreement. As per Clause 3 of the substitution agreement dated 30.08.2011 provides for substitution of concessionaire upon default and not for recall of common loan facility, therefore, there is no default. The respondent was financially viable as by NHAI would not have agreed to the OTFIS had the respondent defaulted on its loan obligations. The NHAI circular on OTFIS dated 09.06.2015 states that the concessionaire has to justify the OTFIS application and NHAI shall access the financial viability before the approval of the OTFIS proposal.

- 5.2. The request letter dated 06.09.2016 by NHAI to RBI permitting the respondent to maintain its existing credit classification in books of accounts is not downgraded. The The petitioner does not have any locus standi to file the present petition and the issues are to be determined by the Civil Court. The Financial position of the respondent was effected due to the behavior of NHAI which terminated the contract.
- 5.3. There is a pre-existing dispute between the parties as a petition under Section 9 of the Arbitration and Conciliation Act, 1996 stayed the order of NHAI to terminate the concession agreement has been filed wherein the Hon'ble Delhi High Court passed the order dated 23.11.2021 staying the consequences of the termination order. Thereafter, the respondent approached the Hon'ble Supreme Court which requested the Arbitral Tribunal to refer the parties to Mediation vide order dated 07.02.2023. Currently, the mediation is being conducted by Conciliation Committees of independent experts of NHAI. The NHAI has stated vide its affidavit to Hon'ble Bombay High Court notarized on 15.11.2021 that the respondent is performing satisfactorily and the project has been delayed due to non-fianalization of infusion of additional funding of Rs. 40 crores by the lenders.
- 5.4. Further, the respondent has a counter-claim of Rs. 6,000 crore against NHAI which has been raised prior to the filing of the present petition. The letters sanctioned by the State Bank of India dated 13.06.2011 and 30.07.2021 records the tenure of the loan till 2026. The project director in the meeting on 24.08.2021 between NHAI, lenders, and respondent stated that *"balance work could not be completed in timeframe and PCOD not*

achieved due to non-release of funds by Lenders and non-infusion of equity by Concessionaire”.

Further, CGM RO, Bombay of NHAI stated in the meeting dated 24.08.2021 that, *“4.1 CGM RO, Mumbai asked the lenders why lenders have now come up with reasons for non-infusion of the funds of Rs. 40 crores after a delay of four months in spite of the fact that lenders had principally agreed on 20.04.2021. Further, it is not clear why additional corporate guarantee is required by lenders as NHAI has already assured that Rs. 40 crores will be paid back to the lenders on priority once Toll collection commenced and further requested the concessionaire to sort this issue at the earliest.”*

5.5. The Arbitral Tribunal referred the disputes between the parties for conciliation and amicable settlement to CCIE for the project in terms of the order dated 10.03.2023. The NHAI agreed to consider the proposal for the restoration of the contract by NHAI to the respondent in the CCIE meeting dated 27.10.2023. The present petition is barred by limitation as the account was declared NPA on 01.11.2016 and the petition was filed on 12.05.2023 which is beyond limitation. It is stated by the petitioner that the default occurred on 01.11.2016 and then on 09.11.2022. The demand notice was sent on 01.11.2019 the interest payments were made till 06.04.2018 which can extend the limitation period till 06.04.2021. The petitioner does not have authorization to file the present petition.

6. The rejoinder has been filed by the petitioner bank vide Dairy No. 01622/3 dated 24.04.2024 wherein it is stated that:-

6.1. It is submitted that for filing the present petition the consent of the consortium banks is not required and in terms of clause 7.2 of the Common

Loan Agreement, all lenders are individually and without prejudice to each other can take recourse to the legal remedies available against the corporate debtor. The clause 4.3 of the Inter Creditor Agreement dated 30.08.2011 entered into by financial creditor and other consortium lenders under the common loan agreement authorises each creditor to take action against the corporate debtor. Clause 3.2 of the Lenders Agent Agreement provides that the Section 7 petition could only be filed with the prior consent of the other lenders. The Common Loan Agreement has an overriding effect over the provisions of the Lenders Agent Agreement. None of the lenders have raised any objection on filing of the present petition.

6.2. It is further submitted that the mediation proceedings with NHAI does not bar the present proceedings. The Section 7 petition is to only ascertain the debt and the default. The mediation proceedings pending are between the NHAI and the corporate debtor. The financial creditor is not a party to the said proceedings and is neither a party to the concession agreement dated 21.01.2011.

6.3. It is averred that the current petition is not barred by limitation as first date of default under the Common Loan Agreement was 04.10.2015. Thereafter, on 16.01.2018, the corporate debtor issued a revival letter to the financial creditor. On 23.12.2020, a similar letter was issued wherein the loan amount was acknowledged by the corporate debtor in its financial statements. OTS proposals were given by the corporate debtor on 14.06.2022 and 01.11.2022 wherein the debt amount has been acknowledged through balance sheets. Therefore, the present petition was filed on 11.05.2023 i.e. well within the limitation period. The reliance is

placed on the Suo Moto Writ Petition (c) No.3 of 2020, wherein the period from 15.03.2020 till 28.02.2022 has been excluded.

6.4. Further, it is averred that the right of the Financial Creditor or any other lender to recall the loan facility availed by the corporate debtor can be ascertained from the Common Loan Agreement. The clause 7.2 provides for the '*consequences of the default*'. The rights available to the Financial Creditor under the substitution agreement and the Common Loan Agreement are independent to each other. It is submitted that the right of the Financial Creditor to replace the Corporate Debtor by a nominated company under the Substitution Agreement is exercisable without prejudice to the rights of the Financial Creditor provided for any Financial Agreements including Common Loan Agreement. As per clause 3.2.2 of the Substitution Agreement, the right of the Financial Creditor to recall the loan facility from the corporate debtor cannot be overridden by the Substitution Agreement.

6.5. It is averred that the execution of the Tripartite Agreement between the corporate debtor, financial creditor and the NHAI does not alter/affect the existence of debt and the default. The tripartite agreement was entered into between NHAI, corporate debtor, financial creditor, Supreme Infrastructure India Limited, and Supreme Infrastructure BOT Private Limited on 09.11.2016. NHAI provided financial assistance of Rs. 540,00,00,000 to corporate debtor. Thereafter, on 30.09.2016 an amount of Rupees One hundred and Ten Crores was yet to be disbursed by the consortium lenders under the Common Loan Agreement out of a total amount of Rupees Nine Hundred Crores. It is submitted that in terms of Clause 6(h) of the Tripartite Agreement, the following points emerged: (i) Interest in relation to the NHAI

OTFIS Facility shall get accrued till commercial operation date ("COD") but shall only be payable after COD in accordance with the 'Financial Model' to be agreed between NHA and other consortium lenders, (ii) provisioning of debt owed to lenders including both principal and interest shall be in accordance with the Financial Model (both before and after achievement of COD) and (iii) servicing of principal amounts in relation to the NHA OTFIS Facility shall only be after COD. The petitioner as per the clause 7.1 and 7.2 of the Common Loan Agreement had the right to recall the entire loan advanced in favour of the corporate debtor which makes the amount due and payable. As per the tripartite agreement, the principal loan amount was to be paid by 31.03.2031 and the interest was to be paid by each financial year.

7. The short written submissions are filed by the petitioner vide Diary No.01622/4 dated 24.04.2024 and by the corporate debtor vide Dairy No. 01622/7 dated 17.05.2024 reiterating the above-mentioned facts.

8. We have heard the learned counsels for the parties and have also perused the record carefully.

9. The first issue for consideration is whether the present application is filed within limitation. It is contended by the corporate debtor that the present petition is barred by limitation. The reliance is placed by the corporate debtor on the judgment ***Gautam Sinha, Ex-Director/Promoter, vs Uv Asset Reconstruction Company Ltd., Company Appeal (AT) (Ins) No. 1382 of 2019.***

However, it can be seen from the records that the date of default is 09.11.2022 i.e. when the corporate debtor failed to clear the outstanding dues in favour of the financial creditor upon receipt of the demand/loan recall notice from the Financial

Creditor. It is further submitted by the financial creditor that first date of default under the Common Loan Agreement was 04.10.2015. Thereafter, on 16.01.2018, the corporate debtor issued a revival letter to the financial creditor. On 23.12.2020, a similar letter was issued wherein the loan amount was acknowledged by the corporate debtor in its financial statements. OTS proposals were given by the corporate debtor on 14.06.2022 and 01.11.2022 wherein the debt amount has been acknowledged through balance sheets.

Moreover, the period from 15.03.2020 till 28.02.2022 stands excluded by virtue of an order dated 27.04.2021 passed by the Hon'ble Supreme Court in "In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020. The operative portion of the order passed by the Hon'ble Apex Court on 27.4.2021 is as follows:-

"We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders."

Further in M.A. 21 of 2022, Hon'ble Supreme Court held:-

"In continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings".

The present petition is filed vide diary No. 01622 dated 12.05.2023, and therefore, it is well within the period of limitation of three years.



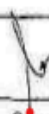




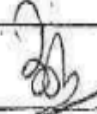


10. It is contended on behalf of the corporate debtor that the petitioner has no locus to file the present petition. The reliance is placed by the corporate debtor on the case of **HDFC Bank v. John Energy Ltd., CP(IB) / 02(AHM)2022 passed by Hon'ble NCLT**. However, it is submitted on behalf of the petitioner that for filing the present petition the consent of the consortium banks is not required and all lenders are individually and without prejudice to each other can take recourse to the legal remedies available against the corporate debtor.

Therefore, the plea of the corporate debtor is not much convincing as clause 7.2 of the agreement provides for the individual filing of the petition. The extract of the agreement is produced as below:-

7.2 CONSEQUENCES OF DEFAULT

If one or more of the aforesaid Events of Default has occurred, Lenders may without prejudice to any other right take one or more of the following actions:

- (i) declare the unpaid principal amount of an interest in respect of the Loans, and all other obligations and all other amounts payable by the Borrower hereunder and

				
Borrower*	SBI CAP as Security Trustee	Canara Bank	IIFCL	CORPORATION BANK
				
L&T Infra	SBOP	Union Bank	SBI as Lencer	SBI as Lenders' Agent

under the Security Documents to be forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein to the contrary notwithstanding;

- (ii) exercise any and all rights specified in the Security Documents and other Transaction Documents including without limitation, to accelerate the obligations of the Promoter with intimation to NHAI, to make equity and other contributions and to enforce all of the Security created pursuant to the Security Documents;
- (iii) exercise such other remedies as permitted or available under Applicable Law;
- (iv) enter upon and take possession of the Secured Property of the Borrower; transfer the Secured Property of the Borrower by way of lease or leave and license or sale;
- (v) instruct any person, who is liable to make any payment to the Borrower, to pay directly to the Secured Parties;
- (vi) sell, assign or otherwise liquidate or direct the Borrower to sell, assign or otherwise liquidate, any or all of the Secured Property and take possession of the proceeds of any such sale or liquidation;
- (vii) collect by itself or through nominee(s) or agent(s) and retain all cash proceeds, including without limitation whether arising from the operations of the Projects or not, and to use such monies in whole or in part, towards repayment of the Borrower's obligations to the Secured Parties in terms of the Finance Documents;
- (viii) sell, assign, or otherwise dispose of any of the Secured Property by the Security Trustee in such manner, at such time, at such place or places and in such term as the Security Trustee may, in compliance with any requirements of law, determine in its absolute discretion;
- (ix) exercise all or any rights or remedies of the Borrower under one or more Project Documents against any parties to such Parties Documents in such manner as the Security Trustee may determined in its absolute discretion; and
- (x) exercise a right of set off of the amounts due and payable to the Lenders against the credit facility granted to the Borrower.

Moreover, as per clause 4.3 of the Inter Creditor Agreement dated 30.08.2011 entered into by financial creditor and other consortium lenders under the common loan agreement authorises each creditor to take action against the corporate debtor. The relevant extract is produced as below:-

4.3 Provisions relating to Acceleration and Enforcement Action

- (a) If any Group A Event of Default shall have occurred and then be continuing, each Creditor shall have the right without prejudice to its other rights and to the rights of any other Creditor to enforce its claims against the Borrower, to declare the Available Commitment of such Creditor terminated, to declare all or any of the Secured Obligations owed under the Finance Documents to such Creditor to be immediately due and payable without presentment, demand, protest or other notice of any kind and to take Enforcement Action.
- (b) If any Group B Event of Default, or Group C Event of Default shall have occurred and then be continuing, each Creditor shall have the right without prejudice to its other rights and to the rights of any other Creditor to enforce its claims against the Borrower, to declare the Available Commitment of such Creditor terminated, to declare all or any of the Secured Obligations owed under the Finance Documents to such Creditor to be immediately due and payable without presentment, demand, protest or other notice of any kind and to take any Enforcement Action, provided however that no such Acceleration or declaration shall be made or Enforcement Action taken by any Creditor unless and until such Creditor complies with the procedure laid down in Article 4.3(c) of this Article IV.
- (c) On occurrence of a Group B Event of Default or Group C Event of Default, no Enforcement Action shall be initiated by any Creditor or by the Lenders' Agent or the Security Trustee on behalf of any Creditor except after complying with the procedure and requirements set out herein below:
 - (i) Any Creditor intending to take any Enforcement Action ("Enforcement Intending Party") shall give notice of its intention to initiate Enforcement Action substantially in the form set out in Schedule III, hereto ("Enforcement Action Notice") to all the other Creditors and the Lenders' Agent. Such Enforcement Action Notice shall specify the particular Enforcement Action, which the Enforcement Intending Party proposes. After receipt of such notice from the Enforcement Intending Party, the Lenders' Agent shall convene a meeting of the Creditors in this behalf within 15 (fifteen) days in accordance with Article 2.5 hereof to take a view on such Enforcement Action Notice. If the course of action proposed by the Enforcement Intending Party in the Enforcement Action Notice or any other course of action is approved by the Majority Creditors, then all the Creditors shall jointly take or cause to be taken by the Lenders' Agent/Security Trustee such approved course of action.
 - (ii) In case the course of action mentioned in the Enforcement Action Notice or any other specific course of action is not approved by the Majority Creditors, then the Creditors shall continue to discuss and make good faith efforts for a period of (a) 30 (thirty) days in case of occurrence of Group B Event of Default, or (b) 45 (forty five) days in case of occurrence of Group C Event of Default, as the case may be, following the date on which such course of action was not approved by the Majority Creditors. If the Creditors arrive at unanimity or the Creditors holding more than 50% of the then outstanding Secured Obligations approve the course of

action proposed in the Enforcement Action Notice or any other course of action, then all the Creditors shall jointly take or cause to be taken by the Lenders' Agent/Security Trustee such approved course of action.

- (iii) Notwithstanding the aforesaid, if, by the expiry of the said period of (a) 30 (thirty) days in case of occurrence of Group B Event of Default, or (b) 45 (forty five) days in case of occurrence of Group C Event of Default, as the case may be, referred to in sub-paragraph (ii) above, the Creditors holding more than 50% of the then outstanding Secured Obligations do not approve the course of action proposed in the Enforcement Action Notice or any other course of action, then the Enforcement Intending Party and any Creditor(s) approving said course of action shall be free to take the Enforcement Action proposed in its Enforcement Action Notice after the expiry of said period of 30 (thirty) days, or 45 (forty five) days, as applicable ("Independent Enforcement Action").
- (d) If any Creditor, or a group of Creditors acting collectively, shall have commenced an Independent Enforcement Action in accordance with Article 4.3(c) above and, subsequent thereto there is a fresh consultation process resulting in the Majority Creditors agreeing on a different course of Enforcement Action, then such course of action shall be treated as the Enforcement Action determined by all the Creditors ("Controlling Enforcement Action") and those Creditors involved in prosecuting the Independent Enforcement Action shall thereupon take steps to do whatever is required to fully synchronise the Independent Enforcement Action with the Controlling Enforcement Action and if such synchronisation is not possible, shall conduct the Independent Enforcement Action in such a way so as not to come in direct or indirect conflict with the Controlling Enforcement Action or shall give up the Independent Enforcement Action and join the Controlling Enforcement Action.
- (e) An Enforcement Action Notice may be revoked by the Enforcement Intending Party that has issued such notice by the delivery of a notice in the form annexed as Schedule IV hereto to each of the Security Trustee and the Lenders' Agent (a "Revocation Notice"). Any such Revocation Notice shall be effective when the Revocation Notice is received by the Lenders' Agent and the Security Trustee.
- (f) It is clarified that any Enforcement Action under the provisions of the SARFAESI Act shall be taken as per the applicable provisions of the SARFAESI Act.

Therefore, based upon the above clauses, the petitioner has locus to file the present petition.

11. The next issue for consideration is that the corporate debtor has stated that there was pre-existing dispute between the parties. It is submitted that the petition under Section 9 of the Arbitration and Conciliation Act, 1996 filed by the respondent was stayed the vide order dated 23.11.2021 by the Hon'ble Delhi High Court. Thereafter, the respondent approached the Hon'ble Supreme Court which

requested the Arbitral Tribunal to refer the parties to Mediation vide order dated 07.02.2023. Currently, the mediation is being conducted by Conciliation Committees of independent experts of NHAI. The NHAI has stated vide its affidavit to Hon'ble Bombay High Court notarized on 15.11.2021 that the respondent is performing satisfactorily and the project has been delayed due to non-finalization of infusion of additional funding of Rs. 40 crores by the lenders. The respondent has relied on the judgment ***Vidarbha Industries Power Limited v. Axis Bank Limited, Civil Appeal No. 4633 of 2021 passed by the Hon'ble Supreme Court.***

However, it is pertinent to note that the issue of pre-existing dispute is not relevant to be ascertained in the Section 7 petition. Even if the contention is taken into account then also the plea cannot be considered as the arbitration matter is pending between the NHAI and the corporate debtor. The financial creditor is neither a party to the said proceedings nor a party to the concession agreement dated 21.01.2011.

12. The third issue for consideration is that the corporate debtor has contended that there are no dues as the common Loan Agreement under which debt is being claimed by the petitioner has been novated by the tripartite Agreement between the NHAI, the petitioner and the respondent dated 09.11.2016, in the agreement the respondent had to avail One Time Fund Infusion Scheme (OTFIS) which was conveyed vide letter dated 12.08.2016 to respondent for up to Rs. 540 crores less any balance amounts left form undisbursed amount after physical completion of at least 50% of the project highway. The common loan agreement dated 30.08.2011 stood novated by the OTFIS Agreement. As per Clause 3 of the substitution

agreement dated 30.08.2011 provides for substitution of concessionaire upon default and not for recall of common loan facility, therefore, there is no default.

On the other hand, it is contended by the financial creditor that the execution of the Tripartite Agreement on 09.11.2016 between the corporate debtor, financial creditor, Supreme Infrastructure India Limited, and Supreme Infrastructure BOT Private Limited and the NHAI does not alter/affect the existence of debt and the default for providing financial assistance of Rs. 540,00,00,000 to corporate debtor. The petitioner as per the clause 7.1 and 7.2 of the Common Loan Agreement had the right to recall the entire loan advanced in favour of the corporate debtor which makes the amount due and payable. As per the tripartite agreement, the principal loan amount was to be paid by 31.03.2031 and the interest was to be paid by each financial year.

However, it is seen from the records that the Common Loan Agreement provides for the recalling of the loan amount as per Clause 7.2 of the agreement which are produced as above. Therefore, the debt amount is due and payable by the corporate debtor.

13. The last issue for consideration is whether there is a default in payment or not. The corporate debtor has placed reliance on the judgment ***Ocean Deity Investment Holdings Limited, PCC v. Suraksha Asset Reconstruction Limited, Company Appeal (At) (Insolvency) No. 795 of 2021 & I.A. No. 1332 of 2022 and Company Appeal (At) (Insolvency) No. 927 Of 2021 & I.A. No. 1534 Of 2022, Hon'ble NCLAT***, however, the facts of this case are different from the facts of the present case. Moreover, it is observed from the record that in the present case, the default is evidenced by Common Loan Agreement dated 30.08.2011 (Annexure-5), notification pertaining to merger of State Bank of Patiala

with the Financial Creditor dated 22.02.2017 (Annexure-6), date of disbursement of loans availed by the corporate debtor (Annexure 7), statement of account detailing outstanding debt due by the corporate debtor as on 17.04.2023 (Annexure 8), Balance sheet of corporate debtor for F.Y ending 31.03.2016, 31.03.2017, 31.03.2018, 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022 (Annexure 9 to 15), letter by corporate debtor admitting its liability for financial dues dated 22.12.2020 and 16.01.2018 (Annexure 16-17), letter by corporate debtor indicating intent to enter into compromise and One Time Settlement dated 14.06.2022 and 29.08.2022 (Annexures 18-19), offer of compromise and One Time Settlement by the corporate debtor dated 01.11.2022 (Annexures 20), loan recall notice by financial creditor financial creditor to corporate debtor dated 09.11.2022 (Annexures 21), sanction letter by financial creditor and State Bank of Patiala to corporate debtor dated 13.06.2011 and 30.07.2011 (Annexures 22), Inter creditor agreement between corporate debtor, Security Trustee and other lenders dated 30.08.2011 (Annexures 23), Lenders' Agent Agreement dated 30.08.2011 (Annexures 24), Escrow Agreement between corporate debtor financial creditor and National Highway Authority of India dated 30.08.2011 (Annexures 25), Security Trustee Agreement between the corporate debtor Lenders Consortium the Financial Creditor and Security Trustee (Annexures 26), letter of corporate guarantee in favour of Security Trustee by Supreme Infrastructure India Limited dated 30.08.2011 (Annexures 27), undertaking by Supreme Infrastructure India limited in favour of Lenders dated 30.08.2011 (Annexures 28), deed of pledge of 51% shares of Supreme Infrastructure India Limited in favour of the Security Trustee dated 15.12.2011 (Annexures 29), three irrevocable Power of Attorneys in favour of the Security Trustee dated 15.12.2011

(Annexures 30), indenture of mortgage executed by corporate debtor in favour of Security Trustee dated 25.10.2011 (Annexures 31), record of default filed with Information Utility (Annexures 32). As per the financial records, it is evident that an amount of Rs. 610,25,39,513/- (Rupees Six Hundred Ten crores Twenty Five lakhs Thirty Nine thousand Five hundred Thirteen Only) as on 17.04.2023 is still pending for payment, which amounts to default by the corporate debtor. The payment was not made by the corporate debtor despite repeated requests by the Financial Creditor.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code is directed to take effect as below:

- 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

15. In Part-III of Form No. 1, Mr. Manish Agarwal, Interim Resolution Professional (IRP) has been proposed by the petitioner. Form No.2 dated 12.04.2023 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional i.e. Mr. Manish Agarwal is attached with the main petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Manish Agarwal and there is nothing adverse against him. His AFA Certification is valid upto 30.06.2025. In view of the above, we appoint Mr. Manish Agarwal, Registration No. IBBI/IPA-002/IP-N00223/2017-18/10904, Email: vrregisteredvaluer@gmail.com, Mobile No. 9412705345, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Manish Agarwal shall be in accordance with the provisions of Section 16(5) of the Code;

- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of

Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit

documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government

Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. The Financial Creditor is directed to deposit a sum of ₹3,00,000/- (Rupees Three Lakhs Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

17. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution

Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

18. The petition is admitted accordingly.

Sd/-

(Ashish Verma)
Member (Technical)

August 30, 2024

TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)