NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1.

C.P. (IB)/845(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **10.06.2026**

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

Vs

Excel Overseas Pvt. Ltd

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)

//VM//

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.845/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
[CIN No. U99999MH1919PTC000615]
Bharat House, Ground Floor, 104
M. S. Marg, Fort
Mumbai - 400001, Maharashtra.

…Financial Creditor/Applicant

V/s

EXCEL OVERSEAS PRIVATE LIMITED
[CIN: U36910MH1992PTC065058]
GW-6140, Bharat Diamond Bourse
Bandra Kurla Complex, Bandra (E)
Mumbai - 400051, Maharashtra.

...Corporate Debtor

Pronounced: 10.06.2026

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

Appearances: Hybrid
Financial Creditor: Adv. Mr. Amey Nadwale a/w Adv. Ms. Geeta Lundwani
Corporate Debtor: Adv. Mr. Rohit Gupta a/w Adv. Ms. Soumya i/b T. N. Tripathi & Co.

ORDER

[PER: BENCH]

1. **BACKGROUND**

1.1 This is an Application bearing C.P. (IB) No.845/MB/2025 filed on 08.11.2024 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") through Mr. Manish Kumar Sinha – Chief Manager of the Applicant *vide* Authority Letter dated 21.10.2024 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Excel Overseas Pvt. Ltd., the Corporate Debtor (CD).

1.2 The CD is a Private Limited Company established in the year 1992. The CD is engaged in the business of cutting and polishing raw diamonds and exporting them to foreign countries.

1.3 The Applicant has proposed the name of Mr. Mahesh Chand Gupta having registration no. IBBI/IPA-001/IP-P-01489/2018-2019/12304, to act as an IRP along with his written communication in Form-2 and valid AFA till 19.11.2024. The Applicant has provided the updated AFA of the proposed IRP in the Rejoinder. On perusal of the same it is seen that the AFA of the proposed IRP is valid till 30.06.2027.

1.4 The Applicant has relied on the following documents:

i. Copy of Letter of Authorization of Authorized Representative of Financial Creditor

ii. Copy of Master Data of the Corporate Debtor from the website of MCA.

iii. Copy of Written Consent of Resolution Professional under Form 2

iv. Copy of Hypothecation Agreement creating First charge on the current assets of the Corporate Debtor namely stock of raw material, semi-finished and finished goods, stores and spares not relating to plant and machinery, bills receivables and book debts and all other movables of the Corporate Debtor.

v. Copy of Form CHG-1 showing registration of charge with Registrar of Companies.

vi. Copy of Supplemental Agreement dated 08.12.2017 being 4th Supplemental Working Capital Consortium Agreement.

vii. Copy of Mortgage Deed dated 20.12.2017

viii. Copy of Latest Sanction Letter dated 09.08.2017 enhancing credit limit upto Rs. 40.91 crores.

ix. Copy of Demand Notice dated 22.07.2020 under Section 13(2) of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002.

x. Copy of Revival Plan vide letter dated 14.08.2020.

xi. Copy of OTS proposal dated 10.07.2023 given by the Corporate Debtor.

xii. Copy of Statement of Account of the Corporate Debtor.

xiii. Copy of Consolidated financial statements for the years 2021, 2022 and 2023 of the Corporate Debtor.

xiv. Computation of claim

xv. Copy of the NESL Certificate (Form D)

xvi. Copy of Revised Sanction Letter Dt. 12.02.2019.

xvii. Bank Account Statement of Corporate Debtor's Loan/ Credit Facilities, For the Period 2005-06.

xviii. Banker's Book Evidence Certificate

2. AVERMENTS OF THE APPLICANT

2.1 The matter first came up for hearing on 26.08.2025. This Tribunal on the request of the Applicant gave liberty to the Applicant to file bank statements prior to the account becoming NPA, vide order dated 15.09.2025. Further, it is recorded vide order dated 27.10.2025 that the Applicant has filed an IA seeking to amend Form-1.

2.2 The Applicant filed an Interlocutory Application (I.A.) No. 4792 of 2025 to amend Form-1 in respect of date of default in Part-IV. This Tribunal *vide* interim order dated 11.11.2025 allowed the aforesaid IA and directed the Applicant to file amended Form 1 after carrying out the modification in the main Application. The facts as per the amended Application are as under:

2.3 As per Part-IV of the amended Application the total amount claimed to be in default by the Applicant is Rs. 60,19,49,713.32/- (Sixty Crore Nineteen Lakh Forty-Nine Thousand Seven Hundred Thirteen Rupees and Thirty-Two Paise) as on 30.09.2024. The total claim includes principal amount of Rs. 40,70,44,005/- (Forty Crore Seventy Lakh Forty-Four Thousand and Five Rupees) as on 01.02.2020 and interest amount of Rs.19,49,05,708.32/- (Nineteen Crore Forty-Nine Lakh Five Thousand Seven Rupees Hundred Eight Rupees and Thirty-Two Paise).

2.4 It is submitted that the Applicant granted a total debt of Rs. 41,91,00,000/-.

2.5 The CD had submitted a Revival Plan vide letter dated 14.08.2020 wherein the CD admitted to the entire debt. The CD paid a sum of Rs. 2 crores on 11.07.2023 and Rs. 1 Crore on 12.07.2023.

2.6 The issuance of OTS letter amounts to acknowledgment under Section 18 of the Limitation Act and therefore the period of limitation starts afresh from 14.08.2020. The CD has made payments in discharge of the debt on 11.07.2023 and 12.07.2023, which also extends the period of limitation.

2.7 The date of default is mentioned as 31.01.2020, which is as per the date on which the CD's account was classified as a Non-Performing asset.

2.8 The limitation is to be calculated after excluding the COVID-19 period when the Hon'ble Supreme Court excluded the period from 15.03.2020 to 28.02.2022 for the purpose of calculating limitation. Accordingly, the limitation in this case begins from 31.01.2020 upto 14.03.2020 and thereafter from 01.03.2022. Accordingly, the limitation to file the Petition would have expired on 30.01.2025. The present Application is filed on 08.11.2024. However, the limitation is extended in view of admissions and acknowledgments given by the CD.

2.9 The Applicant has filed an Additional Affidavit dated 07.11.2025 and attached the following documents:

i. Revised Sanction Letter Dt. 12.03.2019

ii. Bank Account Statement of Corporate Debtor's Loan/ Credit Facilities, For the Period from 2006 to 2025.

iii. Banker's Book Evidence Certificate

3. <u>CONTENTIONS OF CORPORATE DEBTOR</u>

3.1 The CD filed Affidavit-in-Reply dated 20.02.2026, which is affirmed by Mr. Ramesh Himatlal Shah– Authorised Representative of the CD *vide* Board Resolution dated 12.01.2021.

3.2 The CD in its reply states that the Application lacks statutory disclosures and basic particulars regarding:

iv. date(s) of disbursement of debt granted

v. particulars of amount in default and period of default consequent upon which the account was classified as NPA on 31.01.2020 [relied as date of default]

vi. proof as to date of default and existence of financial debt - as mandated by section 7 of the Code read with Rule 4 of NCLT Rules, 2016 and Form-1 prescribed by the said Rules. The present Application is liable to be rejected on this ground alone.

vii. Authorisation for Assignment [Form-B] of the proposed IRP has expired on 19.11.2024

viii. The Applicant has claimed alleged sum of Rs.60,19,49,713.32. However, the Computation Sheet relied pursuant to para-2, Part-IV of the Application is showing the alleged outstanding of Rs.51,68,20,425/-

ix. The claim is asserted under the bill accounts. However, no statement of account pertaining to any bill account is relied upon by the Applicant.

x. Applicant has asserted the interest @15.50% p.a. and compounded it monthly rest. The alleged interest claimed by the Applicant is not supported by either term of sanction letter dated 09.08.2017 or alleged loan documents. Claim of interest of large sum of Rs.24,67,35,680/- is vehemently disputed and denied by the CD. The alleged claim is without any legal basis.

xi. The present Application filed on 08.11.2024 on the basis of alleged default of 31.01.2020 is barred by limitation.

3.3 It is submitted that the Applicant is consortium of banks (Bank of India, Saraswat Co-operative Bank and SVC Co-operative Bank Limited). By letter dated 28.06.2019, one of the consortium members, namely, SVC Co-operative Bank Limited had renewed the export credit facility by charging processing fees of Rs.5,61,500/- for 12 months.

However, the said Bank discontinued the export facilities within a period of three months i.e. September 2019. The Applicant failed to provide any assistance to the CD on the SVC's failure to continue the sanctioned facility.

3.4 The CD was having Rs.12.29 Crores in fixed deposits with the Applicant Bank. Each of the members of the consortium of Bank was holding separate fixed deposits. At the consortium meeting held on 16.12.2019, CD requested the Bank to appropriate fixed deposits kept with them for serving the interest. However, the Bank illegally and erroneously seized the account on 31.01.2020 despite having a fixed deposit of Rs.12.29 crores. The Applicant eventually adjusted the fixed deposit with interest on 20.02.2020.

3.5 Further, the CD submits that it has given various proposals dated 15.06.2020, 14.08.2020, 17.09.2020, 04.11.2020, 14.11.2020 and 13.03.2023 for restructuring of the accounts. Along with the above, letters dated 25.01.2021, 04.02.2021, 26.02.2021, 11.05.2021, 14.06.2021, 11.02.2022, 21.03.2022, 28.07.2022 and 15.04.2023, were submitted by the CD for holding on operation with cut-back mechanism to reduce the liability. However, none were accepted by the Applicant.

3.6 The CD submits that the statutory requirement as prescribed by clause -(a) of sub - section (3) of section 7 is not complied with. The said provision requires the Applicant to furnish along with Application - record of the default recorded with the Information Utility or such other record or evidence of default as may be specified.

3.7 The Applicant filed this instant Application on 08.11.2024. After filing the Application, Form-D, NeSL Certificate dated 01.03.2025 was obtained. The Application is not based on Form-D, rather Form-D is based on Application which is incomprehensible. The alleged default information provided by the Applicant and recorded in Form-D that

the default had occurred on 31.01.2020 with amount in default at Rs.61,95,04,225.88 is wholly incomprehensible.

3.8 The Applicant has originally asserted the date of default as 01.10.2019. However, this date of default is rectified as 31.01.2020 as date of non-performing assets (NPA). The legality and validity in the NPA in accordance with RBI Master Direction is pending in DRT with interim stay. The Applicant is avoiding regular adjudication in the matter by the Tribunal of Competent Jurisdiction. The Applicant has relied on packing credit account to prove the default. Packing credit ("PC") account is treated as cash credit /overdraft account for the purposes of classification as NPA. As per para-2.1.2 of RBI Master Direction for classification of account as NPA, PC account must be "out of order" as per para-2.2. The account can be treated as "out of order", when the outstanding remains in excess of the sanctioned limit for 90 days. Thus, for the PC account to be NPA, there must be a 90 days default when the account exceeds the limit. The perusal of the account relied by the Applicant would demonstrate that the PC account was well within the sanctioned operative limit on 31.01.2020. The same is the situation in respect of bill account produced along with additional affidavit. By no stretch of imagination, the account was NPA on 31.01.2020. The Applicant has not pleaded or proved NPA in accordance with the RBI guidelines.

3.9 In 13(2) notice dated 22.07.2020 [Annexure-A, pg.19], it is alleged that,

" ... the account of M/s Excel Overseas Pvt. Ltd. with MMO Branch has been classified as NPA account on 31.01.2020 pursuant to your default in making repayment . . ."

It is therefore apparent that NPA itself could not be a default as alleged by the Applicant.

4. REJOINDER

4.1 The Applicant filed a Rejoinder through an Affidavit dated 13.03.2026.

4.2 The Applicant submits that to satisfy the mandate of Section 7 of the Code, the Applicant merely has to establish two elements: (i) existence of financial debt and (ii) occurrence of default. The law is settled by the Hon'ble Supreme Court of India in Innoventive Industries Ltd. v. ICICI Bank (Civil Appeal Nos. 8337-8338 of 2017) and unequivocally reaffirmed in M. Suresh Kumar Reddy v. Canara Bank [Civil Appeal No. 7121 of 2022] that the Adjudicating Authority under Section 7 of the Code is only required to satisfy itself that a financial debt exists and that a default has occurred. Once the default is established through documentary evidence, the admission of the petition is mandatory.

4.3 The Applicant acting as the lead bank of the consortium, sanctioned and enhanced credit facilities to the CD upto Rs. 40.91 crores, vide Sanction Letter dated 09.08.2017. The facilities granted are Working Capital Consortium Limits, specifically categorized into Fund-Based limits which include FDBP/FUDBP/AFDBC (Bills) and a sub-limit for W/W Packing Credit/PCFC. The facilities were subsequently renewed/ reviewed vide the Revised Sanction Letter dated 12.03.2019. The actual disbursements of these facilities are evident from the Account Statements of the CD from 2006 to 2025.

4.4 The CD continuously failed to meet its repayment obligations, leading to the loan accounts being classified as NPA on 31.01.2020, strictly in accordance with the RBI norms. The Applicant has placed on record the Bank Account Statements for the Corporate Debtor's loan/credit facilities from 2006 to 2025, evidencing the defaults.

4.5 The entire default across the three loan accounts is evidenced by the "Particulars of Claim" document produced hereunder and marked as Annexure P2. It is submitted that the default amount in respect of the Packing Credit Account (A/c No. 378907220000012) was inadvertently omitted in the computation of claim produced

with the Company Petition as Annexure 13. Hence, the current and consolidated computation of the total default across all loan three accounts is summarized in the table below:

Facility & Account Nos.	Principal Amount as on 31.01.2020 (Rs.)	Interest from 01.02.2020 to 30.09.2024 (Rs.)	Recovery & Other Credits (Rs.)	Total Claim Amount (Rs.)
Packing Credit Account (378907220000012)	13,54,81,600	4,36,39,739	9,39,92,051	8,51,29,288
Bills Accounts (37890904000005 & 37890904000007)	27,15,62,405	24,67,35,680	14,77,660	51,68,20,425
Consolidated Total	**40,70,44,005**	**29,03,75,419**	**9,54,69,711**	**60,19,49,713**

4.6 The CD has acknowledged the debt through its own balance sheets for the FY 2021, 2022 and 2023 (Annexure 12 (colly) produced with the Company Petition), a series of restructuring proposals submitted between June 2020 and March 2023 (Exhibit 6 (Colly) produced by the Corporate Debtor with the Reply Affidavit), and a formal OTS proposal dated 22.05.2023 (Exhibit 11 produced by the Corporate Debtor with the Reply Affidavit).

4.7 The CD is deliberately ignoring the comprehensive evidence submitted by the Applicant. The Sanction Letter dated 09.08.2017 and the Revised Sanction Letter dated 12.03.2019 establish the enhancement and renewal of the credit limits up to Rs. 40.91 Crores. Consequently, through the Additional Affidavit dated 07.11.2025, the Applicant has already placed on record the comprehensive Bank Account Statements of the Corporate Debtor from the year 2006 to 2025. These statements prove the disbursements as well as the crystallization of the default.

5. SUR-REJOINDER

5.1 The CD has filed a sur-rejoinder through an Affidavit dated 28.03.2026.

5.2 The Applicant for the first time has asserted the claim in Account No.378909040000005 [Ex-PI, pg.25, Rejoinder]. The alleged claim in this account is without any foundation in the Application. The Application is still defective. The statutory particulars prescribed in Form- I are still absent in the Application.

5.3 The Applicant has attempted to mislead the Tribunal on the issue of "default" with specious plea that default is admitted by the CD which is factually incorrect and staunchly denied. It is not the case of the Applicant that default has occurred on account of non-payment of any specific bill. The case regarding default is on the basis of NPA which is not proved from the documents placed on record. There is no other evidence on record which would demonstrate the default of principal or interest in any particular transaction.

6. <u>WRITTEN SUBMISSIONS OF APPLICANT</u>

6.1 The Applicant has relied on the following judgments:

i. Hon'ble NCLAT in Abhishek Gupta v. Asset Reconstruction Company (India) Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 1094 of 2021]

ii. Hon'ble Supreme Court in the matter of Asset Reconstruction Company (India) Limited v. Bishal Jaiswal [(2021) 6 SCC 366]

iii. Hon'ble NCLAT in Puneet P. Bhatia Vs. ASREC (India) Ltd. and Anr.

iv. Hon'ble NCLAT in the matter of Milind Kashiram Jadhav v. State Bank of India and Anr.,

7. <u>WRITTEN SUBMISSIONS OF CD</u>

7.1 The CD relied on the following judgments:

i. Hon'ble Supreme Court in Rohan Vijay Nahar v. State of Maharashtra, [(2026) 2 SCC 182]

ii. Hon'ble High Court of Delhi, New Delhi in Anant Construction (P) Ltd v. Ram Niwas [1994 SCC OnLine Del 615]

8. ANALYSIS AND FINDINGS

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

8.2 It is an admitted fact that the Applicant is the lead bank of the consortium. Various credit facilities were granted by the Applicant to the CD. Vide letter dated 09.08.2017 attached at page nos.80-90 of the Application and revised sanction letter dated 12.03.2019 attached to the Additional Affidavit, Applicant had sanctioned and enhanced credit limit to the CD upto Rs.40.91 crores, which can be seen from the Sanction Letter dated 12.03.2019. The facilities granted were Working Capital categorised into Fund-based limits, which included FDBP/FUDBP/AFDBC (Bills) and a sub-limit for W/W Packing Credit/PCFC. The parties executed a 4th Supplemental Agreement dated 08.12.2017.

8.3 In order to secure the above credit facilities, a Mortgage Deed dated 08.12.2017 was executed between the parties.

8.4 The CD itself has admitted in its Reply that it was a part of a consortium arrangement with the Applicant and had been availing credit facilities. The CD has referred to various restructuring proposals, revival plans and OTS proposals submitted by it from time to time. Such, conduct clearly establishes the subsistence of a Lender-borrower relationship between the parties.

8.5 Further, as per the terms of the Sanction Letter dated 09.08.2017, the following constituted an event of default:

i. *Failure by the Borrower to pay any amount due and payable to banks e.g. instalment of term loan, servicing of interest on term loan/working capital limit.*

ii. *Delay in achieving commercial operations beyond the estimated COD.*

iii. *The borrower ceasing or threatening to cease to carry on its business.*

iv. *Non-compliance of any term or condition stipulated by bank.*

8.6 As the CD defaulted in making repayment of dues/interest, the Applicant issued a demand notice in terms of Section 13(2) of the SARFAESI Act, 2002 dated 22.07.2020, informing the CD that the account has slipped into NPA category and calling upon the CD to pay a sum of Rs.42,57,93,176.29/- within 60 days from the receipt of the said notice.

8.7 Consequently, the CD sent a revival plan letter dated 14.08.2020 requesting for restructuring of the outstanding dues, however, the same was not acceptable to the consortium. The CD, further, submitted one-time settlement (OTS) proposal dated 10.07.2023 to all the consortium banks offering an upfront payment of Rs.27 crores.

8.8 The CD has contended that the date of disbursement is not disclosed by the Applicant. It is observed that the Applicant has attached the statement of account showing the disbursement to the CD. On perusal of the account statements of the CD, on page no. 118 of the Application and page nos. 36-42 of the Additional Affidavit dated 07.11.2025, it is seen that disbursement of the credit facilities is clearly reflected. Therefore, the contention of the CD qua the disbursement cannot be accepted.

8.9 With regard to the non-mentioning of the particulars of the default in Part-IV, working for computation of amount and that the computation sheet showing different claim amount, the CD relies on the judgment of Hon'ble Supreme Court in ***Rohan Vijay Nahar v. State of Maharashtra***, [(2026) 2 SCC 182] reiterating that when a statute prescribes a manner of doing a thing, it must be done in that manner. In the present

case, as per the CD, the statutory disclosures as stated aforesaid are missing. It is observed that the Applicant in its Rejoinder submitted the consolidated claim amount, which is similar to the claim amount in Part-IV of the Application. Also, the Applicant has stated the particulars of default amount in Part-IV of the Application. Further, the CD relies on the judgment of Hon'ble Delhi High Court in ***Anant Construction (P) Ltd v. Ram Niwas*** [1994 SCC OnLine Del 615], wherein the Hon'ble Court considering the ambit of the rejoinder held that, *".... A plea which is foundation of plaintiff's case or essentially a part of causes of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected cannot be introduced for the first time by way of replication. [para-24 (10)]".* To answer this, the Applicant has clearly mentioned in its Rejoinder that it has inadvertently omitted to place on record the bill account in the amended Application and Additional Affidavit and hence, the same is provided in the Rejoinder, for which the CD was given an opportunity to rebut and the CD has filed a Sur-Rejoinder. Therefore, we hold that the judgment in the matter of Anant Construction (P) Ltd. (Supra) does not apply to this case. We also hold that the information as to default amount has been rightly provided in the Application read with its Rejoinder.

8.10 The CD states that the amount in default in Part-IV is different from the amount in computation sheet and that the interest amount claimed is not agreed upon by the CD as it is not mentioned in the sanction letter or any documents attached hereto. However, it is observed that, the Applicant has applied the rate of interest in accordance with the Bank's Master Circular on Rupee Credit to Exports and Imports and prevailing Marginal Cost of Funds Based Lending Rate (MCLR). As the export bills became overdue on 01.06.2019, the applicable 1-year MCLR on that date was exactly 8.60%, thereby making contractual rate of MCLR+6.90% to be 15.50% p.a. (8.60%+6.90%) and for the Packing Credit Account, the mandated ROI for overdue

packing credit is MCLR+1.65% and the contractual rate of interest is 9.85% p.a. (8.20%+1.65%). In our view, the Applicant has established based on the information provided and documents attached with the Application that even the principal amount claimed by the Applicant is more than the threshold of Rs.1 crore and the quantum of debt is not for the AA to decide.

8.11 The date of default is mentioned as 31.01.2020, being the date on which the CD's account was classified as NPA. The CD states that the Application is barred by limitation as the Application is filed on 08.11.2024. We find that the Application is within limitation from the following table:

Event	**Date**	**Limitation Period Expires**
Date of Default is NPA Date (Covid-19 exclusion 15.03.2020 28.02.2022)	31.01.2020	17.01.2025
Submission of Revival Plan by C (Covid-19 exclusion 15.03.2020 28.02.2022)	14.08.2020	01.08.2025
Submission OTS proposal by CD	10.07.2023	09.07.2026
Application filed on	08.11.2024	

8.12 Therefore, from the above table we find that the CD has acknowledged the debt by giving revival plan and OTS proposals to the Applicant. Further, it is seen that the CD has acknowledged the debt through the balance sheets for the FY 2021, 2022 and 2023. With regard to this, the Applicant relies on the judgment of Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Limited v. Bishal Jaiswal [(2021) 6 SCC 366],*** wherein the court has settled that entries in balance sheets of the CD is a valid acknowledgment of debt. Hence, basis on the above facts and law we hold that the Application is within limitation.

8.13 The CD contests that the NPA classification date cannot serve as the date of default. We place reliance on the judgment of Hon'ble Supreme Court in ***Laxmi Pat Surana v. Union Bank of India, [(2021) ibclaw.in 53 SC],*** wherein it was held that,

> *"37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action under Section 7 of the Code."*

8.14 In our view, the relevance of date of default is only for the purpose of determining whether the Application is filed within the limitation period. Normally, NPA date is on the expiry of 90 days period after the default has taken place. In this case, the Application is well within limitation and therefore, even if date of default is taken 90 days prior to the NPA date, still the date of filing of Application will fall within the limitation period. As such, in our view the said objection of the CD is of no legal consequence.

8.15 The Applicant has placed on record the NeSL record of default in Form D, which reflects the Status of Authentication of default as '**Authenticated'** and the total outstanding amount as Rs. 61,95,04,234.86/- and date of default as 31.01.2020.

8.16 The Applicant has placed on record the Certificate under Section 2A(a) of Bankers Book Evidence Act, 1891, certifying the account of CD being maintained in the bank.

8.17 Here it is relevant to state that the Hon'ble Supreme Court in *Innoventive Industries vs ICICI Bank (Civil Appeal No. 8337-8338 of 2017)* and subsequently in *M. Suresh Kumar Reddy vs Canara Bank & Ors.(Civil Appeals No. 7121 of 2022)* has consistently held that in a Section 7 application the Adjudicating Authority is only required to satisfy itself regarding the existence of financial debt and occurrence of default.

8.18 Further, this Tribunal places reliance on the judgment of Hon'ble Supreme Court in ***Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors.*** [Civil Appeal No(s). 2211/2024 decided on

18.02.2026] while examining the validity of the admission of the Corporate Debtor to CIRP has laid down as under :-

*"**B. Validity of CIRP Admission***

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

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

30. On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. <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 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):</u>

"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)

8.19 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.

8.20 In view of the above judgments, i.e., *Innoventive, M.Suresh Kumar Reddy* and *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 CD, in our opinion are not relevant for adjudication of this Application and are therefore, rejected.

8.21 The Applicant has proposed the name of Mr. Mahesh Chand Gupta to act as the Interim Resolution Professional (IRP) and has given his declaration in Form 2, *inter alia*, stating that no disciplinary proceeding is pending against him. The Applicant has attached valid AFA in Form B of the IRP which is valid till 30.06.2027.

8.22 Thus, it is clear from perusal of the record that an amount of more than the threshold limit of Rs.1 Crore under Section 4 of the Code, is due and payable by the CD to the Applicant. Hence, we find that the Applicant has been able to substantiate the existence of a financial debt due and payable by the CD, which remained unpaid. The debt so owed by the CD to the Applicant falls within the definition of "financial debt" under Section 5(8) of the Code.

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

8.24 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.845/MB/2025 filed under Section 7 of the Code by Union Bank of India, the Applicant, for initiating CIRP in respect of **Excel Overseas Pvt Ltd**, the Corporate Debtor is hereby **admitted**.

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

I. We prohibit-

a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. Mahesh Chand Gupta** a registered Insolvency Professional having Registration Number **IBBI/IPA-001/IP-P-01489/2018-2019/12304** and e-mail address mcgupta90@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.

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	**SAMEER KAKAR**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

//VM//