



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT III

Item No. 201

C.P. (IB)759(MB)/2024

CORAM:

SH. HARIHARAN NEELAKANTA IYER
Member (Technical)

MS. LAKSHMI GURUNG
Member (Judicial)

ORDER SHEET OF THE HEARING ON **23.10.2026**
(HEARING THROUGH: HYBRID MODE)

NAME OF THE PARTIES: Assets Care & Reconstruction Enterprise Limited
Vs
S&T Interiors and Contracting Services Private
Limited

Appearance

For Petitioner : Appearance not marked

For Respondent : Adv. Darshit Dave (VC)

SECTION 7 OF THE IBC, 2016

ORDER

The above company petition is listed for pronouncement of order. The same is pronounced in open court, vide a separate order.

Sd/-
HARIHARAN NEELAKANTA IYER
Member (Technical)
---Ram Kishan---

Sd/-
LAKSHMI GURUNG
Member (Judicial)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**

C.P.(IB)-759(MB)/C-III/2024

*[Under Section 7 of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of

**Assets Care & Reconstruction
Enterprise Limited**

*(acting in its capacity as trustee of ACRE-
144-TRUST),*

Having its Office at:

Unit No.502, C Wing, ONE BKC,
Plot No.C-66, G - Block, Bandra Kurla
Complex, Mumbai – 400051
[CIN : U65993DL2002PLC115769]

... Financial Creditor/Petitioner

Versus

**S & T Interiors and Contracting
Services Private Limited**

202, Alap CHS, Shantilal Modi Road,
Near State Bank of India, Kandivali West,
Mumbai 400 067

[CIN : U74900MH2012PTC226870]

... Corporate Debtor/Respondent

Order pronounced on: 23.10.2026

Coram:

Sh. Hariharan Neelakanta Iyer
Member (*Technical*)

Ms. Lakshmi Gurung
Member (*Judicial*)

Appearances:

For the Financial Creditor: Adv. Rohit Gupta a/w Adv. Virgil
Braganza (PH)

For the Corporate Debtor: Adv. Shabad Jan a/w Adv. Darshit Dave



Per: Ms. Lakshmi Gurung, Member (Judicial)

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) by the Assets Care & Reconstruction Enterprise Limited (**Financial Creditor/Petitioner**) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s. S&T Interiors and Contracting Services Private Limited (**Corporate Debtor/Respondent**) claiming default in repayment of Rs. 38,84,46,961/- (Rupees Thirty-Eight Crores Eighty-Four Lakhs Forty-Six Thousand Nine Hundred Sixty-One only) due as on 15.07.2024.
2. **Facts and submissions as emerging from the Petition**
 - 2.1 The Corporate Debtor availed certain fund based and non-fund-based facilities from Standard Chartered Bank (**'Original Lender'**) to the tune of Rs. 11,00,00,000/- vide Facility Letter dated 19.07.2017 and subsequently the facilities were increased to an amount not exceeding Rs. 25,50,00,000/- vide Facility Letter dated 28.02.2018 and thereafter to Rs. 43,50,00,000 vide facility letter dated 31.08.2018.
 - 2.2 It is submitted that the said facilities were secured by Deed of Guarantee, Deed of Personal Guarantee and Memorandum of Hypothecation executed by the Corporate Debtor in favour of the Lender.
 - 2.3 It is submitted that on 13.12.2019, the Corporate Debtor defaulted in repayment of its obligations under the said facilities which led the Original Lender to file petition under section 7 of the Code, for a default amount of Rs 33,06,94,163.06 bearing No. CP (IB) 1025 of 2021 on 18.10.2021, seeking initiation of CIRP against the Corporate Debtor. During the pendency of this petition, the parties entered into a Memorandum of Arrangement (**'Settlement Agreement'**) on 15.02.2023 wherein the Corporate Debtor agreed to pay Rs. 6,00,00,000/- in full and final settlement of its liability to the Lender in the following manner:



- a. Rs. 1,20,00,000/- within 15 days from the date of the Settlement Agreement i.e. on or before 02.03.2023 (**‘Tranche 1 Payment’**).
- b. 4,80,00,000/- within 90 days from the date of the Settlement Agreement, i.e. on or before 16.05.2023 (**‘Tranche 2 Payment’**).

- 2.4 As per the terms of the Settlement Agreement, the Corporate Debtor made the Tranche 1 Payment of Rs. 1,20,00,000/- to the Lender on 01.03.2023. Accordingly, in terms of the Settlement Agreement, the Original Lender filed an application seeking withdrawal of CP (IB) No. 1025 of 2021 which was allowed on 13.03.2023.
- 2.5 It is submitted that the corporate debtor did not make the Tranche 2 payment within the specified time as per the settlement agreement i.e. 16.05.2023. It is further submitted that due to default in Tranche 2 payment, the Settlement Agreement stood cancelled and the full outstanding dues was restored. While the default existed for Tranche 2 payment, the Original Lender executed an Assignment Agreement dated 22.11.2023 between Standard Chartered Bank as Assignor and Petitioner as Assignee and has assigned its various loan accounts as per details provided in Schedule 1 to the Assignment Agreement, wherein one of the Loan Accounts is that of the Corporate Debtor reflecting outstanding amount of Rs. 32,03,05,140/- including principle and interest.
- 2.6 It is further submitted that despite lapse of nearly 14 months from the period stipulated under the Settlement Agreement (i.e. on or before 16.05.2023) for the Corporate Debtor to make the Tranche 2 Payment, no payments were forthcoming from the Corporate Debtor. Therefore, the Financial Creditor issued Notice of Revocation dated 13.03.2024, to the Corporate Debtor and the Guarantors, stating that the settlement stood revoked and all concessions and privileges stood withdrawn and demanded the Corporate Debtor to pay outstanding dues of Rs. 36,89,46,756/- (Rupees Thirty-Six Crore Eighty-Nine Lakh Forty-Six Thousand Seven Hundred and Fifty-Six) as on 11.03.2024



within 7 days of notice. Upon receipt of Revocation Notice, the Corporate Debtor sent response dated 22.04.2024, requesting an appointment to meet with the representatives of the Financial Creditor. It is therefore claimed that the corporate debtor had received the said revocation notice.

- 2.7 It is further submitted that the date of default claimed in the present petition occurred under the Settlement Agreement on 17.05.2023, when the Corporate Debtor failed to make the Tranche 2 Payment and the settlement amount stood revoked and such default is continuing till date.

3. **Additional Affidavit on behalf of Financial Creditor**

- 3.1 Pursuant to the order dated 16.10.2024 of this Tribunal, the Financial Creditor filed Additional Affidavit dated 11.12.2024, to place on record the email dated 10.12.2024 received from NeSL forwarding record of default (Form -D) in which the status of authentication is reflected as 'Disputed'.
- 3.2. It is submitted that as per Record of Default issued by NeSL, the Corporate Debtor has disputed the quantum of the claim of the Financial Creditor on the ground that the Settlement Agreement dated 15.02.2023 was entered into with the original lender i.e. the assignor and that certain payments were made pursuant thereto to the original lender.
- 3.3 The Petitioner submitted that the corporate debtor has itself admitted an outstanding liability of INR 4,50,00,000/- in the Form D while disputing the quantum of the financial debt.

4. **Reply on behalf of Corporate Debtor**

The Corporate Debtor filed reply dated 03.04.2025 seeking dismissal of petition on following grounds:



4.1. ***Petition is incomplete***

- a. It is submitted that the Financial Creditor has failed to annex the complete Statement of Account to the Petition, which is a mandatory requirement under Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and in the absence of such Statement of Account, the Tribunal cannot determine the existence of debt and default under section 7 of the Code.

Claim cannot be Re-Agitated

- 4.2. It is submitted that the Financial Creditor has suppressed the proceedings and orders passed by this Tribunal in CP No. 1025 of 2021 ('Old Petition'). It is further submitted that the Petitioner has unconditionally withdrawn the old petition without reserving any liberty with the Petitioner.

4.3. ***Incorrect Date of Default***

- a. It is submitted that the date of default as pleaded in the captioned petition cannot be based on the purported breach or default of the Settlement Agreement dated 15.02.2023. It is further submitted that the Petitioner having chosen to fall back on the outstanding dues in the old petition cannot re-invent the date of default on the basis of the Settlement Agreement.
- b. It is further submitted that the Petitioner is conscious that the actual date of default as per the claim in the old petition was falling within the period under Section 10A of the Code. Therefore, the petitioner has manipulated the date of default to circumvent the statutory bar under Section 10A of the Code.
- c. It is further submitted that even in the old petition the original lender had actually pleaded an incorrect date of default i.e., 13.12.2019 while the amount allegedly under default was



completely discharged and paid by the Respondent and accordingly till March 2020, the account of the Respondent was regular and no amounts were in default. It is further submitted that on the onset of COVID 19 pandemic, the Respondent had applied for the regulatory relief package under the framework of the RBI on 29.05.2020 and on 14.08.2020, the original lender had approved such request and extended the payment timeline for instalments falling due on and from March-April 2020. It is also submitted that pursuant to such approval the Respondent was provided payment moratorium till September 2020 and instalments under the facilities were made due on 08.10.2020. Thus, the default fell during Section 10A period.

- d. It is submitted that the present Petitioner, being the assignee of the original lender stands in the same shoes as its assignor and is bound by the same limitations. The present Petition is nothing but a calculated attempt to overcome the statutory bar under Section 10A of the Code by artificially introducing a new date of default, which is impermissible in law.

4.4. ***Compliance with Consent Terms***

- a. It is submitted that the present petition is not maintainable as the Corporate Debtor has substantially complied with the Consent Terms. It is submitted that the Original Lender and the Corporate Debtor had entered into a Memorandum of Arrangement ('Consent Terms') dated 15.02.2023 and agreed that Rs. 6,00,00,000/- would be paid by the Corporate Debtor as full and final settlement against the entire outstanding liability.
- b. It is submitted that the said amount of Rs. 6,00,00,000/- was to be paid by releasing the Bank Guarantees as defined in clause 1.1 of the Consent Terms . The balance amount, after releasing of the said bank guarantees was to be paid by the Corporate Debtor.



- c. It is submitted that all the bank guarantees aggregating to Rs. 4,60,21,196/- have been duly released. The details of the released Bank Guarantees are:

Sl. No.	Bank Guarantee No.	Amount in Rs.
1.	854020260162-LA	78,74,145/-
2.	854020253526-A	1,26,44,203/-
3.	85402053535-LP	1,78,69,309/-
4.	854020292404	76,33,542/-

- d. It is submitted that in addition to release of above bank guarantees, the Corporate Debtor has also paid Rs. 1,68,27,137/- to the Original Lender as per following details:

SN.	Date	Particulars of RTGS/ NEFT Transaction No.	Amount in Rs.
1	01.03.2023	HSBCN23060321317 AND 9001348N7FPJ	1,20,00,000.00
2	01.05.2023	IN5IN23050100JPY	36,04,881.74
3	18.07.2023	INS5IN23071800F4L	850,846.00
4	23.08.2023	IN5IN23082300BLL	371,409.00

- e. It is therefore submitted that the Corporate Debtor has paid aggregate sum of Rs. 6,28,48,333/- towards the settlement amount of Rs. 6,00,00,000. Thus, the corporate debtor has fully complied with the Settlement Terms though there is delay in terms of the timelines and hence the Petitioner should consider this as full compliance with the Consent Terms.



- f. It is submitted that the Petitioner has intentionally recalled the entire outstanding sum, rather than claiming just the small balance amount of delayed interest, with the *malafide* intention of artificially inflating the claimed default amount above the threshold limit.

Abuse of Process

- 4.5. It is submitted that the present petition is not maintainable as the original default occurred during Section 10A period, the Financial Creditor has concealed the fact of complete compliance of the Settlement Agreement. It is lastly submitted that present proceedings are being used for recovery which is not permitted under the Code.

5. **Affidavit-In-Rejoinder on behalf of the Financial Creditor**

The Financial Creditor filed its Rejoinder dated 06.05.2025 stating as follows:

5.1 ***Petition is Complete***

- a. It is submitted that the corporate debtor's assertion of 'incompleteness of the application' ignores the explicit terms of the Assignment Agreement. The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 do not explicitly require statement of account of the assignor to be annexed to the petition. Rule 4(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 mandates that the applicant, in cases of assignment, should include a copy of the assignment or transfer agreement and other relevant documents to demonstrate the assignment or transfer.
- b. It is submitted that only Tranche 1 payment and few payments reflecting in the account statement annexed to the rejoinder, have been received from the Corporate Debtor under the Settlement Agreement but full amount of Tranche 2 payment has not been



received. In any case, the account statements of the Original Lender is annexed to the rejoinder.

5.2 *Petition is distinctive from earlier section 7 Petition*

- a. It is submitted that the petitioner has disclosed the details of CP No. 1025 of 2021 in para 4 of Part IV at page 5 of the present petition and has also annexed order dated 13.03.2023 passed by this Tribunal in old petition under section 7 dismissing it as withdrawn pursuant to settlement between the parties.
- b. Reliance is placed on Clauses 5.1(a) and 5.1(b) of the Settlement Agreement which stipulated that in the event of non-compliance by the Corporate Debtor with the payment terms, the settlement agreement may be revoked and upon such revocation, the original lender is entitled to recover the total outstanding debt in accordance with the original terms of the facilities, after giving due credit for any amounts repaid by the Corporate Debtor.
- c. It is submitted that the default claimed under the old petition under section 7 was under the original facilities, whereas the default claimed under the present petition arises from the subsequent default under the Settlement Agreement.
- d. It is submitted that the Settlement Agreement stipulates that upon failure to make payment in terms of the payment schedule, the entire outstanding amount under the original Facilities becomes due and payable as per Clauses 5.1(d) and 5.1(f) of the Settlement Agreement.

5.3. *Objections in relation to incorrect Date of Default*

- a. It is submitted that the date of default, pleaded in the present Petition is 17.05.2023 as the Corporate Debtor failed to make the Tranche 2 Payment on the said due date, thereby committing a default under the terms of the Settlement Agreement.



- b. The bar under Section 10A of the IBC is wholly inapplicable to the captioned Petition, as the default has occurred on 17.05.2023, which is well beyond the 10A period. It is submitted that the rights of the Financial Creditor to initiate proceedings under Section 7 of the Code arise under the Settlement Agreement read with the Assignment Agreement.

5.4. ***Breaches under the Settlement Agreement:***

- a. It is submitted that the contention of the corporate debtor that the Settlement Agreement stands fully complied is incorrect. Clause 3.2 of the Settlement Agreement makes it clear that the settlement agreement was two-fold (i) payment of the settlement amount of Rs. 6,00,00,000/- and (ii) release of the bank guarantees. Therefore, the submission of the corporate debtor that the settlement amount was fully discharged partly by release of the Bank guarantees totalling to Rs. 4,60,21,196/- and partly by making payments amounting to Rs. 1,68,27,137 aggregating to more than Rs. 6,00,00,000/- is untenable.
- b. To the contention that sum of Rs. 1,68,27,137 is duly paid to the original lender, it is submitted that Rs. 1,20,00,000/- was paid by the Corporate Debtor on 01.03.2023 and with respect to the payment of the balance Rs. 48,27,137/- Corporate Debtor has made 4 payments:

<i>Date</i>	<i>Particulars</i>	<i>Amount (in Rs.)</i>
<i>01.05.2023</i>	<i>Misc credits</i>	<i>36,04,881.74</i>
<i>18.07.2023</i>	<i>Misc credits</i>	<i>8,50,846.00</i>
<i>23.08.2023</i>	<i>Misc credits</i>	<i>3,71,409.00</i>
<i>13.11.2023</i>	<i>Misc credits</i>	<i>265.50</i>
	<i>Total</i>	<i>48,27,401.74</i>



- c. It is submitted that from the above payment of Rs. 48,27,401.74 made by the Corporate Debtor, Rs. 9,65,787/- was utilised towards salary payments of employees of the Corporate Debtor along with legal fees.
- d. An amount of Rs. 38,61,615.24 is paid by the Corporate Debtor as on 30.11.2023 towards the Tranche 2 Payment of INR 4,80,00,000/- leaving a balance of INR 4,41,38,384.76 due and payable under the Settlement Agreement. Even assuming without admitting that the entire payment of INR 48,27,401.74 was applied towards the Tranche 2 Payment under the Settlement Agreement, an amount of Rs. 4,31,72,598.26 would still remain due and payable by the Corporate Debtor under the Settlement Agreement which entitles the Financial Creditor to take file an application for initiation of CIRP.

5.5. ***Section 7 proceedings can be initiated upon breach of Settlement Agreement***

- a. The Financial Creditor has relied on the judgment of the Hon'ble NCLAT in ***Priyal Kantilal Patel vs. IREP Credit Capital Pvt. Ltd. (2023 SCC OnLine NCLAT 51)*** which has been relied upon by the Hon'ble NCLAT in its order dated 03.04.2025 in the matter of ***Bahadur Ram Mallah (Ex-Director, Uniworth Textiles Limited) Versus Assets Reconstruction Company (India) Limited and Anr.***
- b. The Financial Creditor has submitted that the Corporate Debtor's attempt to link the present default under the Settlement Agreement to the default under the original Facilities is grossly erroneous and contrary to the clear legal position laid down by the Supreme Court in ***Ramesh Kymal vs. Siemens Gamesa Renewable Power Pvt. Ltd. (2021 SCC OnLine SC 72)***, which clarifies that defaults occurring after the moratorium period are outside the scope of Section 10 A.



Analysis & Findings

6. Heard the Ld. Counsel for parties. There are no disputes on the facts of the case. The arguments are advanced on legal submissions by Ld. Counsel on both sides which have been carefully considered in view of the material on record.
7. The Petitioner is the assignee of debt owed by the Corporate Debtor to the Original Lender (Standard Chartered Bank) which has assigned its outstanding debt to the Financial Creditor vide Assignment Agreement dated 22.11.2023, to which there is no challenge by the Corporate Debtor.
8. It is the case of the Petitioner that the Original Lender had earlier filed application under section 7 against the Corporate Debtor in CP. No. 1025 of 2021, which was withdrawn after the parties entered into Settlement Agreement and the First Tranche of payment for Rs. 1,20,00,000 was made to the Original Lender. However, default occurred as Corporate Debtor failed to make payment of 2nd Tranche of Settlement Amount of Rs. 4,80,00,000/-.
9. It is further submitted by the Petitioner that even after the lapse of 14 months from the due date for payment of Tranche 2, the Corporate Debtor has not made the complete payment of Tranche 2, as per the terms of the Settlement Agreement dated 15.02.2023. Thus, default has again occurred entitling the Financial Creditor to file present petition under Section 7 of the Code.
10. The Financial Creditor has further submitted that as per the terms and conditions of the said Settlement Agreement, in case of failure to make payment as per the payment schedule, the default amount would be restored back to the original due amount as the settled amount would stand withdrawn. Therefore, Financial Creditor issued Revocation Notice dated 13.03.2024 to the Corporate Debtor demanding the total outstanding dues of Rs. 36,89,46,756/- from Corporate Debtor.



11. Perusal of the reply filed by the Corporate Debtor reveals that the Corporate Debtor has neither denied having availed the loan from the Petitioner (original lender) nor disputed the execution of the various documents in connection therewith but it has objected to the admission of the petition on various grounds which are dealt with in seriatim as below:

Incomplete Petition

12. Respondent has contended that application is incomplete as the statement of account has not been annexed to the application which is mandatory requirement under Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, submitting that the Financial Creditor has failed to annexe the complete Statement of Account to the Petition.
13. For reference, Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 is reproduced below:

“4. Application by Financial Creditor:

(3) The applicant shall serve a copy of the application to the registered office of the corporate debtor and to the Board, by registered post or speed post or by hand or by electronic means, before filing with the Adjudicating Authority.”

14. A plain reading of the aforesaid Rule nowhere mandates the statement of account to be annexed to the application. In any case, the petitioner has annexed the statement of accounts of the Corporate Debtor in the books of the original lender in the Affidavit in Rejoinder. It is seen that the amounts reflected in the statement of accounts completely match with the submissions of the petitioner and also with the submission of the corporate debtor.



15. We agree with the submission of the Petitioner that Rule 4(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 requires the applicant to annexe copy of Assignment agreement to the application under section 7 of the Code. Rule 4(2) is reproduced below:

“4. Application by Financial Creditor:

(2) Where the applicant under sub-rule (1) is an assignee or transferee of a financial contract, the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documentation to demonstrate the assignment or transfer.”

16. The Petitioner has annexed the Assignment Agreement dated 22.11.2023 demonstrating that the original lender has assigned its debt to the petitioner which fact has neither been denied nor challenged by the corporate debtor. Accordingly, the contention raised by the Corporate Debtor in this regard is devoid of merit.

Claim cannot be re-agitated

17. The Corporate Debtor has contended that financial creditor has suppressed the proceedings in CP 1025 of 2021 which was unconditionally dismissed as withdrawn without any liberty.
18. We have perused the Application and note that the Financial creditor has mentioned about the earlier Petition CP No. 1025 of 2021 and has also placed on record order of this Tribunal dated 13.03.2023 allowing the withdrawal of the petition on the ground of settlement agreement. Further, the subject matter of this petition is arising from the default in settlement agreement, which has not been adjudicated in the earlier petition. Therefore, the objection of the corporate debtor on this account cannot be sustained.



Incorrect Date of Default & Full Compliance with the Consent Terms

19. The Corporate Debtor has contended that the date of default stated in the present application is based on the alleged default under the Settlement Agreement therefore amount of default should also be taken as per the settlement amount. However, the Petitioner, for the default amount, has elected to fall back upon the outstanding dues forming the subject matter of the earlier petition. If that be so then, date of default has to be ascertained based on earlier petition. The petitioner cannot substitute or derive a fresh date of default for the default amount based on earlier petition. It is further contended that the actual date of default in respect of the claim raised in the earlier petition fell within the period covered under Section 10A of the Code.
20. Both the Counsel on either side have extensively relied on Clause 5 of the Settlement Agreement dated 15.02.2023. Ld. Counsel for the Financial Creditor has referred to clause 5.1(b) to contend that on default of settlement terms, full amount of debt in accordance with Financing Documents shall be due and payable by the Corporate Debtor. The Settlement amount is Rs. 6,00,00,000/- while the original due amount as on 30.09.2021 was Rs. 33,06,94,163.06.
21. Ld. Counsel for Corporate Debtor has referred to clause 5.1(a) according to which, subject to obligations of the company in clause 5.2, the Settlement Agreement shall stand automatically terminated. In other words, if the settlement agreement stands terminated to revive the original due amount then the date of default should also be reckoned on the earlier default and not default of the settlement agreement. It was then argued that the earlier date of default fell during Section 10A period and therefore present petition is not maintainable. Ld. Counsel for the Corporate Debtor vehemently argued that the petitioner cannot choose the default amount of earlier default at the time of filing of earlier petition but choose the date of



default based on the settlement agreement which stood terminated as per the Petitioner's own version. Therefore, it is argued that if date of default is based on settlement agreement then default amount should also be based on the settled amount. If the Petitioner chooses to rely on the default amount as per earlier petition then the date of default occurred during the Section 10A period. It is therefore contended that the date of default is incorrect.

22. The Corporate Debtor, in its reply, has also contended that the Bank Guarantees aggregating to Rs. 4,60,21,196/- have been released and that an additional sum of Rs. 1,68,27,137/- has been paid through RTGS/NEFT transactions, thereby claiming to have paid an aggregate amount of Rs. 6,28,48,333/- towards the settlement amount of Rs. 6,00,00,000/-.
23. At this juncture we may refer to the important contents of the Settlement Agreement which are extracted below:

“The Company, the Corporate Guarantors and the Personal Guarantors are collectively referred to as the “Obligors”

....

H. *The company has by way of letters dated November 25, 2021, September 28, 2022, November 4, 2022 and November 28, 2022, now proposed to make payments for aggregate amount or INR 6,00,00,000 (Indian Rupees Six Crores), in full and final settlement of its liability with respect to the amount of INR 33,06,94,163.06 (Indian Rupees Thirty Three Crores Six Lakhs Ninety Four Thousand One Hundred And Sixty Three point Zero Six) owed to the Lender (as of September 30, 2021) along with all further interests, penal interests, costs, charges and expenses in relation to the Facilities, as may have accrued ("Debt"), in full, in accordance with the Payment Schedule (as defined below) and the other terms and conditions set out herein and accordingly, the Parties have agreed to enter into this Agreement.*

1.

1.1 Definitions



“Bank Guarantees” means, collectively, each of the following bank guarantees issued by the lender at the request of the Company:

- (a) Mobilization advance bank guarantee no. 854020260162-LA for an amount of INR 78,74,145 (Indian Rupees Seventy-Eight Lakhs Seventy-Four Thousand One hundred and Forty five);
- (b) Mobilization advance bank guarantee no 854020253526-LA for an amount of INR 1,26,44,203 (Indian Rupees One Crore Twenty-Six Lakhs Forty-Four Thousand Two hundred and Three)
- (c) Performance bank guarantee no 85402053535-LP for for an amount of INR 1,78,69,306 (Indian Rupees One Crore Seventy-Eight Lakhs Sixty-Nine Thousand Three hundred and Six); and
- (d) Performance bank guarantee no. 854020292404-LP for an amount of INR 76,33,542 (Indian Rupees Seventy-Six Lakhs Thirty-Three Thousand Five hundred and Forty Two).

and **“Bank Guarantees”** means any one of them.

“Debt” has the meaning ascribed to such term in Recital H.

2. ACKNOWLEDGMENT OF DEBT BY THE OBLIGORS

2.1 Each Obligor acknowledges, agrees and confirms that:

- (a) the Debt is due. and it remains liable to discharge the Debt in accordance with the terms of the relevant Financing Documents;
- (b) it has defaulted in discharging its payment obligations under the Financing Documents;
- (c) its obligation to pay the debt in accordance with the Financing Documents constitutes financial debt as construed under IBC; and

Notwithstanding anything to the contrary contained" in any Financing Document. Its obligation to pay the Debt shall be determined by reference to the amount due to the Lender under the Financing Documents without giving effect to any reductions or haircuts that may be imposed or, sought to be imposed in respect



of its obligations whether pursuant to the IBC, any other laws relating to insolvency or bankruptcy, or any other analogous law or regulation. or under any other mechanism in respect of credit defaults, restructuring, stressed assets, non-performing assets and other similar mechanisms. or in any other manner whatsoever (including. without limitation, under or pursuant to a resolution plan or a scheme of arrangement).

3. ARRANGEMENT BETWEEN THE PARTIES

*3.1 The company covenants with the Leader that it shall make the payments aggregating to INR 6,00,00,000 (Indian Rupees Six Crores) to the Lender in accordance with the Payment Schedule, in full and final settlement of the Debt ("**Debt Payments**").*

3.2 Upon

(a) payment of the Debt Payments in full, to the satisfaction of the Lender, in accordance with the Payment Schedule; and

(b) receipt of the Lender of:

(i) originals of each of the Bank Guarantees; and

(ii) a confirmation. in form and manner satisfactory to the Lender, from the beneficiaries of the Bank Guarantees relinquishing their right to claim under / invoke each relevant Bank Guarantee. It is clarified that in relation to Bank Guarantees nos. 854020260162-LA and 854020253526-LA, the Lender hereby acknowledges receipt of a copy of letter dated March 29, 2022 issued by Reliance Industries Limited to the Lender in relation to withdrawal of its claim pursuant to the extension cum invocation letter dated March 24, 2022.

The lender will within 15 (fifteen) Business Days: (i)"issue a no-due certificate to the Obligors, discharging them of all obligations under the applicable Financing Documents; and (ii) take all necessary steps, including instructing its counsels to file an application before the National Company Law Tribunal, Mumbai for withdrawal of the NCLT Application.

Provided that upon completion of each of the conditions set out in (a) and (b) above, on or prior to March 31,2023, the Lender will,



within 7 (seven) Business Days: (i) issue a no-dues certificate to the Obligors, discharging them of all obligations under the applicable Financing Documents; and (ii) take all necessary steps, including instructing its counsels to file an application before the National Company Law Tribunal, Mumbai for withdrawal of the NCLT Application.

5. DEFAULT OR INSOLVENCY OR LIQUIDATION EVENT

5.1 Notwithstanding anything contained in this Agreement on and at any time after the occurrence of an Insolvency or Liquidation Event, or upon the failure by the Company to make any of the Debt Payments as per the Payment Schedule (unless otherwise waived by Lender in its sole discretion):

- (a) Subject to the obligations of the Company under Clause 5.2 below this Agreement shall stand automatically terminated;*
- (b) all of the Debt (along with any other amounts calculated in accordance with the Financing Documents) shall be due and payable by the Obligors forthwith without the requirement of any further notice to the Obligors:*
- (c) all obligations of each Corporate Guarantor and Personal Guarantor under the Corporate Guarantee and the Personal Guarantee (as may be applicable) shall stand reinstated for the full amount of the Debt.*
- (d) all rights of the Lender against the Company, each Corporate Guarantor and Personal Guarantor under the Financing Documents and Applicable Laws shall be reinstated in respect of the entire Debt and all amounts payable to the Lender in respect thereof.*

...

5.2 Subject to Clause 3.3 of this Agreement, it is hereby clarified that the Debt payable by the Obligors shall be reduced only by any Debt Payments which are actually received by the Lender, except where the Lender is unable to apply such Debt Payments towards repayment of the Debt due to any judicial, arbitral, administrative or governmental pronouncement or order.”



24. It is noted that the corporate debtor is referred to as the obligor in the Settlement Agreement. On the date of the Settlement Agreement i.e. 15.02.2023, the obligor has acknowledged that the debt is due and there is default in discharging the payment obligations under the financing documents. Thus, even if it is assumed, without going into the correctness or otherwise, that the earlier default occurred during section 10A period, the default had continued till 15.02.2023 (date of signing of the settlement agreement) which is a date beyond section 10A period.
25. Plan reading of Clause 3 clearly demonstrate that as per clause 3.1 the corporate debtor had agreed to make payment of Rs. 6,00,00,000/- referred to as debt payment. In addition to clause 3.1, the corporate debtor had also agreed under clause 3.2 (b) to release bank guarantees from the beneficiaries relinquishing their right to claim under the relevant bank guarantees. It was agreed that upon completion of both the conditions set out in clause (a) and (b) under 3.2 that the lender shall issue no due certificate to the obligors. Under 3.2, clause (a) is separated from clause (b) by using the word “and”. In other words, the company has unequivocally agreed to make payment of Rs. 6,00,00,000/- and also get the bank guarantees released from the beneficiaries. Therefore, the contention of the Corporate Debtor that settlement amount of Rs. 6,00,00,000 was to be partly paid by releasing bank guarantees is factually incorrect. It is undisputed that after the Tranche 1 payment following 3 payments have been received:

<i>Date</i>	<i>Particulars</i>	<i>Amount (in Rs.)</i>
01.05.2023	Misc credits	36,04,881.74
18.07.2023	Misc credits	8,50,846.00
23.08.2023	Misc credits	3,71,409.00
13.11.2023	Misc credits	265.50
	Total	48,27,401.74



The above payments are reflected in the statement of account of the corporate debtor in the books of the Original Lender placed on record by the petitioner. Neither they aggregate to total of Rs. 4,80,00,000/- (Tranche 2 payment) nor paid within the stipulated period as per the settlement agreement. Consequently, the assertion of the Corporate Debtor that the consent terms have been fully complied with is rejected. In the light of above facts, we have no hesitation to conclude that the default on behalf of the corporate debtor continued beyond Section 10A period and default was existing on the date of settlement agreement i.e. 15.02.2023. Further, in view of express language of clause 3.2 of the settlement agreement, we hold that default in payment of Tranche 2 payment continued even on the date of filing of present petition as releasing of bank guarantees did not amount to payment of “debt payments” in full.

26. As can be seen from the above extracted clauses, the Settlement Agreement expressly stipulates that, in the event of default, the outstanding liability shall revert to the original debt amount, and the entire debt shall become due and payable. The express language of settlement agreement to which the parties have agreed and acted requires to be seen in its entirety contrasted with the facts of the case. Accordingly, the contention of the Corporate Debtor that even if there is any default, it is small balance amount of delayed interest, is not tenable and is rejected.
27. We also deem it appropriate at this juncture to refer to the observations of Hon'ble Supreme Court in the matter of **B. Prashanth Hegde vs. State Bank of India & Anr. [Civil Appeal No. 477 of 2022]**, decided on 12.02.2026:

“36. The purpose of providing the necessary particulars in a prescribed form is to give a bird's eye view of the details of the Corporate Debtor, the financial debt, the default and the date of default so that the Adjudicating Authority can discard frivolous applications at the threshold. This is clear from clause (b) of sub-



section (5) of Section 7 of IBC which empowers the Adjudicating Authority to reject an incomplete application.

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40. In our view, a conjoint reading of sub-sections (1), (2) and (5) of section 7 makes it clear that an application under Section 7 of a financial creditor for initiating CIRP of CD hinges on a default on part of CD of financial debt of an amount exceeding the specified threshold. The Form prescribed for making the application inter alia serves the purpose of bringing out the necessary ingredients for presentation of an application under section 7(1) of IBC. The purpose of providing the date of default is to show that the debt is due and payable i.e. it has not become time barred. Therefore, in our view, if the application is substantially in conformity with the prescribed Form and discloses the necessary ingredients for making an application under sub-section (1) of Section 7 and provides the relevant materials/ information to substantiate those ingredients, the purpose of adhering to the Form is served, and such application is not liable to be rejected under clause (b) of sub-section (5) of section 7 of IBC on the ground of any insignificant omission or error in the application. The aforesaid view finds support from use of the expression ‘may’ before ‘reject’ in Section 7(5)(b) of IBC. This means that if the Adjudicating Authority is satisfied from the materials placed before it in the application that all the necessary ingredients are satisfied for presentation of an application under section 7(1) of IBC, it may not reject the application for an insignificant omission or non-adherence to the Form.”

28. Thus, as observed by the Hon’ble Supreme Court in **B. Prashanth Hegde vs. SBI (Supra)**, the purpose of date of default is to indicate that the debt is due any payable and is not barred by limitation. Relying on the observations of the Hon’ble Supreme Court that if the application discloses the necessary ingredients of Section 7 and provides relevant information/evidence to substantiate the same such application is not liable to be rejected on ground of any insignificant error in the application, we hold that if the application is in conformity with the prescribed form, discloses the necessary ingredients under Section 7 of the Code and no significant error in the application is found. The Financial Creditor has successfully established the debt and continuing default by way of cogent evidence.



Abuse of Process

29. The Corporate Debtor has contended that the present petition has been filed to circumvent the statutory bar imposed under Section 10A of the Code, which prohibits the initiation of CIRP in respect of defaults occurring during the specified period. In support of its contention that the date of default falls within the period covered under Section 10A of the Code, the Corporate Debtor has placed on record the email dated 13.05.2020, the Recall Notice dated 11.09.2020, the Guarantee Invocation Letter dated 01.10.2020, and the Demand Notice dated 11.12.2020.
30. In response to the aforesaid contention, the Financial Creditor has submitted that the present petition is based on the default arising from the breach of the Settlement Agreement, which constitutes a fresh cause of action and, therefore, is not barred by Section 10A of the Code.
31. A plain reading of recital 'H' indicates that the Corporate Debtor, vide its letters dated 25.11.2021, 28.09.2022, 04.11.2022 and 28.11.2022, had proposed to make payments for aggregate amount of Rs. 6,00,00,000/- towards full and final settlement of the outstanding amount of Rs. 33,06,94,163.06, pursuant to which the parties entered into the Settlement Agreement. By the own admission of the corporate debtor on the date of entering into the settlement agreement on 15.02.2023 the default continued which is beyond Section 10A period.
32. It is settled law that a Financial Creditor is not precluded from filing section 7 petition for a continuous default that occurs even after the 10A period. We are supported by the judgment of Hon'ble Madras High Court in ***Dharamshi K. Patel & Anr. Vs. Indian Bank & Ors. [Writ Petition No. 712/2024]***, decided on 23.01.2025:

"16. In the instant case, though the default commenced after the period specified in Section 10-A, it is not in dispute that it



continued even after the moratorium period. The intention of the legislature is to give relief by suspending initiation of CIRP. This Court, from the plain reading of Section 10-A is unable to agree with the learned Senior Counsel that even in a case where the default continued after the period of moratorium, no application can be filed.

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22. *Since proviso to Section 10-A mandate that no application shall ever be filed for initiation of CIRP of the Corporate Debtor for the default occurring during the moratorium period, the above judgment relied upon by the learned Senior counsel is in tune with the statutory provision. However, the proviso cannot be extended to cases where the default is continued beyond the moratorium period.”*
33. Further, for the sake of arguments, even if we agree with Corporate Debtor that original default occurred during 10A period for an amount of Rs. 33,06,94,163.06 as claimed in the earlier Section 7 Petition, the corporate debtor acknowledged the continued default as recorded in the Settlement Agreement dated 15.02.2023 with the original lender wherein the default committed by the Corporate Debtor has been expressly acknowledged the continued default.
34. We also find force in the argument of the Financial Creditor that the Corporate Debtor itself has admitted while disputing Form D that only amount of Rs. 4.5 crores were outstanding. The dispute remarks provided the Corporate Debtor in Form D issued by the NeSL is reproduced below:

“Dispute Remarks:

Remarks – Standard Chartered Bank is the Original Creditor of this facility which now has been assigned. Our Company has entered into One Time Settlement Agreement with SCB and made partial payment also. At present outstanding balance to be paid as per this settlement is INR 4.5 Cr. only and hence our company is disputing the wrong reporting.”



35. We note that on Corporate Debtor's failure to comply with the terms of 2nd Tranche payment as per the Settlement Agreement, the Financial Creditor issued a Revocation Letter dated 13.03.2024 addressed inter alia to the Corporate Debtor, thereby revoking the Settlement Sanctioned vide the Settlement Agreement and recalled the total outstanding dues i.e. Rs. 36,89,46,756/- as on 11.03.2024 together with further charges, costs and interests, to be paid within 7 days from the date of the said letter.
36. The scope of examination by Adjudicating Authority under section 7 of the Code, is limited to determination of whether debt and default exist and not to adjudicate on the quantum of the debt. As long as the debt amount is above the threshold limit, not falling within Section 10A period, the application deserves to be admitted. In the present case by Corporate Debtor's own submission, the outstanding debt amount is Rs. 4.5 Crores emanating from default in compliance of settlement agreement. Thus, date of default mentioned in the present petition 17.05.2023 does not suffer from any infirmity. In light of the above discussion, all objections of the Corporate Debtor stand rejected.
37. As the debt and default is established by the Financial Creditor and the amount is above the threshold limit under section 4(1) of the Code (i.e., Rs. 38,84,46,961 as on 15.07.2024 mentioned in the petition) and the petition is within limitation, we are satisfied that the present petition is maintainable.
38. In view of the aforesaid discussions, the Company Petition bearing no. C.P.(IB)-759(MB)/C-III/2024 deserves to be admitted. Accordingly, it is ordered as follows:



ORDER

- i) The Company Petition No. C.P.(IB)-759(MB)/C-III/2024 is hereby **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against S & T Interiors and Contracting Services Private Limited.
- ii) The Petitioner has proposed the name of **Mr. Anil Kashi Drolia**, Registration No. IBBI/IPA-001/IP-P02327/2020-2021/13482, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 24.07.2024 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 02.02.2024. Upon verification, we note that the AFA of the proposed IRP is valid up to 30.06.2027. Accordingly, we appoint **Mr. Anil Kashi Drolia** (anildrolia.ip@gmail.com) as the Interim Resolution Professional (IRP) to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
- iii) The Financial Creditor shall deposit an amount of Rs. 5,00,000/- towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.
- iv) There shall be a moratorium under section 14 of the Code prohibiting the following:
 - 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 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 the possession of the Corporate Debtor.
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- v) 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.
 - vi) The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - vii) The order of moratorium shall have effect from the date of pronouncement of this order till the 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 Corporate Debtor under section 33, as the case may be.
 - viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
 - ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall



provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- xii) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

39. Accordingly, the C.P.(IB)-759(MB)/C-III/2024 is **admitted**.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

/Saloni/

Sd/-

Lakshmi Gurung
Member (Judicial)