**NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH COURT VI**

**Item No. P2**

**C.P. (IB)150/(MB)2026**

CORAM:

**SHRI SAMEER KAKAR**
**HON'BLE MEMBER (TECHNICAL)**

**SHRI NILESH SHARMA**
**HON'BLE MEMBER (JUDICIAL)**

ORDER SHEET OF HEARING (HYBRID) DATED **30.07.2026**

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

**V/s**

**Indo Pacific Projects Limited**

**Under Section 7 of the IBC**

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**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

**Sd/-**

**NILESH SHARMA**
**MEMBER (JUDICIAL)**

**Sd/-**

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

//Sumant//

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI**

**C.P. (IB)/150/MB/2026**

*[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

**Union Bank Of India**

PAN:AACU0564G

Shop No. F-1/2/3/6/7/8,

Govinda Gourkhede Complex

Khasra No. 91/1, Seminary Hills

Nagpur- 440006

**…Financial Creditor**

*V/s*

**Indo Pacific Projects Limited**

[CIN No. L74140MH1982PLC026882]

1st Floor B, Poonam Chambers,

Byramji Town, Chhindwara Road,

Nagpur-440013

**...Corporate Debtor**

**Pronounced: 30.07.2026**

**CORAM:**

**HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)**

**HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)**

***Appearances: Hybrid***

For Applicant: Adv Devul Dighe i/b Adv Aditya Dubey

For Respondent: Adv Mr. Radhe Agarwal

**ORDER**

***[PER: CORAM]***

## 1. BACKGROUND

1.1. C.P. (IB) No.150/MB/2026 (Application) was filed on 13.02.2026 by **Union Bank Of India** the Financial Creditor (FC), having PAN No. AACU0564G under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of **Indo Pacific Projects Limited** the Corporate Debtor having CIN No. L74140MH1982PLC026882

1.2. This Application has been affirmed by one Mr. Rohit Pradeep Gulkari, authorised signatory of the Applicant vide letter dated 31.01.2026.

1.3. As per Part IV of the Application, the amount claimed to be in default is Rs.13,96,88,639.09/- (Rupees Thirteen Crore Ninety-Six Lakhs Eighty-Eight Thousand Six Hundred Thirty-Nine and Nine paisa only)

1.4. The date of default is stated as 02.04.2018.

1.5. The Applicant has proposed the name of Ms. Megha Agarwal, an Insolvency Professional , having Registration No. IBBI/IPA-001/IP-P-01456/2018-2019/12272, to act as the Interim Resolution Professional (IRP) (having valid Authorisation for Assignment up to 30.06.2027) (as per IBBI site), in case the Application is admitted.

## 2. CONTENTIONS OF APPLICANT (FC)

2.1. It is stated that the Corporate Debtor approached the Financial Creditor for a Term Loan facility aggregating to Rs. 26.30 Crores, comprising of Rs.19.87 Crores (Non-CRE) and Rs.6.43 Crores (CRE).

2.2. The Financial Creditor sanctioned the said facility vide Sanction Letter dated 15.09.2012 for a tenure of 84 months. The loan was secured by an equitable mortgage over immovable property situated at Plot No. 197, Mouza-Hiwari, Middle Ring Road, Wardhaman-Nagar, Nagpur, admeasuring 11,211.54 sq. meters along with a constructed building admeasuring 9,508.237 sq. meters. The Directors of the Corporate Debtor deposited title deeds and furnished personal guarantees. In furtherance thereof, the parties executed a General Term Loan Agreement, Memorandum of Deposit of Title Deeds, General Power of Attorney, and other security documents.

2.3. A charge bearing Charge ID No. 10382239 securing Rs. 26.30 Crores was duly created and registered with the Registrar of Companies, Mumbai.

2.4. The Corporate Debtor, in its audited financial statements for FY 2014-15 and FY 2015- 16, expressly acknowledged the debt due to the Financial Creditor.

2.5. The Corporate Debtor committed continuous defaults in repayment from 02.04.2018 onwards. Consequently, the loan account was classified as Non-Performing Asset (NPA) on 30.06.2018.It is noticed that as per NPA certificate attached on page No. 91 of the Application the date of NPA is 29.06.2018

2.6. The Financial Creditor issued a demand notice under Section 13(2) of the SARFAESI Act 2002 on 16.07.2018 demanding payment of Rs. 7,81,92,279.19/-, followed by issuance of a Possession Notice dated 19.06.2019.

2.7. The Financial Creditor also filed an Original Application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before the Hon'ble Debts Recovery Tribunal, Mumbai, against the Corporate Debtor and its personal guarantors for recovery of outstanding dues.

2.8. The Corporate Debtor sought restructuring and submitted multiple One-Time Settlement (0TS) proposals offering approximately 50% of the alleged outstanding dues, disputing the quantum of liability. All such proposals were rejected by the Financial Creditor as being inconsistent with the Bank's recovery policy. Despite repeated opportunities, the Corporate Debtor failed to regularize the account.

2.9. Proceedings were also initiated against the personal guarantors, including issuance of a Demand Notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. Objections raised were duly considered and rejected, and the Corporate Debtor continued to remain in default.

2.10. A possession letter dated 13.10.2023 was issued to the Corporate Debtor and the personal guarantors. Despite pendency of proceedings before the DRT and SARFAESI actions, no payment was made.

2.11. The Corporate Debtor later vide Letter dated 13.02.2025 submitted an 0TS proposal for Rs. 4 Crores.

2.12. As on 31.12.2025, the total outstanding dues payable by the Corporate Debtor amount to Rs. 13,96,88,639.09/- comprising of principal amount of Rs. 7,51,69,269.19/- and interest amounting to Rs. 6,57,19,900.70/.

2.13. Further, vide additional affidavit dated 27.03.2026 it is stated that the initial period of limitation of three years would have ordinarily expired on or about 01.04.2021.

However, the Corporate Debtor has, from time to time, acknowledged its liability by submitting One-Time Settlement (OTS) proposals and through written communications to the Financial Creditor, thereby extending the period of limitation in terms of Section 18 of the Limitation Act, 1963.

2.14. It is also stated that the acknowledgement made by the Corporate Debtor vide OTS proposals and communications dated 21.11.2020, 28.09.2021, 14.10.2021, 25.10.2021 and 13.02.2025, along with part payment, constitute valid acknowledgement under Limitation Act, 1963.

2.15. It is further submitted that even though the Corporate Debtor, in certain communications, disputed the quantum of liability, it has consistently admitted the existence of debt and expressed willingness to settle the same, which constitutes a valid acknowledgement in law.

2.16. Since the acknowledgement dated 25.10.2021 falls within the excluded period, the limitation effectively recommenced from 01.03.2022, extending the limitation period up to 01.03.2025. The subsequent OTS proposal dated 13.02.2025, along with part payment, was made within the subsisting limitation period, thereby giving rise to a fresh period of limitation of three years commencing from 28.02.2025.

2.17. Further it is submitted that the Hon'ble Supreme Court, in Cognizance for Extension of Limitation (Suo Motu Writ Petition (C) No. 3 of 2020), by order dated 10.01.2022, directed that the period from 15.03.2020 to 28.02.2022 shall stand excluded for the purposes of computing period of limitation under any general or special laws. Consequently, the balance period of limitation as on 01.04.2021, if any, shall become available from 01.03 2022. This judgment applies to the present case and supports the computation of limitation from 01.03 2022 after exclusion of the COVID-19 period.

2.18. Further the NeSL Form D i.e. the Record of Default states the Status of Authentication of Default as "**AUTHENTICATED".** Further the Date of Default as stated in the NeSL Record of Default is 02.04.2018.

2.19. The Applicant has further attached the following documents along with the Application;-

a) Copy of the master data of the Corporate Debtor.

b) Copy of the sanction letter dated 15.09.2012.

c) Copies of Memorandum of Deposit of Title Deeds, Letter of Guarantee, General Hypothecation Agreement of Goods & Debts executed between Financial Creditor and Corporate Debtor dated 17.09.2012.

d) Copy of the Charge form (Charge ID No. 10382239)

e) Copies of Financial Statement of the Corporate Debtor for the Financial Year 2015-2016 and 2014- 2015

f) Copy of NPA Certificate

g) Copy of Demand Notice under SARFAESI dated 16.07.2018.

h) Possession Notice dated 19.06.2019 under SARFAESI Act, 2002 issued by the Financial Creditor against the Corporate Debtor

i) Copy of the Original Application filed by Financial Creditor against the Corporate Debtor and its guarantors before Ld. DRT, Mumbai,

j) Copy of the Letter issued by Financial Creditor rejecting 0TS proposal of the Corporate Debtor dated 28.01.2021

k) Copy of the Demand Notice issued under Rule 7(1) of IBC (Personal Guarantors) Rules, 2019 dated 18.08.2021 to Mr. Nandkumar Harchandani and Mr. Vijaykumar Harchandani.

l) Copy of Reply-cum-Objection fled by Personal Guarantor Mr. Nandkumar Harchandani dated 30.08.2021.

m) Copy of Letter issued by Financial Creditor rejecting objections of Personal Guarantor dated 16.09.2021

n) Copy of Letter issued by Corporate Debtor seeking reduction in rate of interest dated 28.09.2021

o) Copy of Letter issued by Financial Creditor rejecting OTS and seeking revised offer dated 30.09.2021

p) Copy of Letter issued by Corporate Debtor offering 3.50 Crores towards settlement dated 14.10.2021

q) Copy of Letter issued by Financial Creditor demanding full repayment dated 20.10.2021.

r) Copy of Letter issued by Corporate Debtor raising objections to the reply of Financial Creditor dated 25.10.2021.

s) Copy of Letter issued by Financial Creditor demanding full repayment to the Corporate Debtor dated 26.10.2021.

t) Copy of Possession Letter issued by Financial Creditor to Corporate Debtor and Personal Guarantors dated 13.10.2023.

u) Copy of OTS Proposal dated 13.02.2025.

v) Copy of Letter of Financial Creditor rejecting OTS Proposal dated 24.02.2025.

w) Copy of the Statement of Account (S0A] as on 20.08.2025 for Account bearing No. 349206580000003 and 349206580000004.

x) Certificate under the Bankers Book of Evidence Act, 1891.

y) Copy of NESL Record of Default in Form D.

z) Copy of Letter of Authority.

aa) The Written Consent from IRP in Form 2.

bb) Working of calculation of Outstanding Debt.

## 3. REPLY BY CORPORATE DEBTOR

3.1. At the hearing held on 18.03.2026, Mr. Radhe Agarwal appeared on behalf of the Respondent and waived issuance of notice. He requested ten (10) days' time to file a Reply following receipt of the Additional Affidavit from the Applicant, while confirming that a copy of the Application had already been served upon the Respondent. At the request of the Ld. Counsel, ten (10) days' time was granted to file the Reply.

3.2. Subsequently, during the hearing held on 20.04.2026, there was no representation on behalf of the Corporate Debtor. The Tribunal noted that no Reply was available on record, and the Applicant confirmed that no Reply had been served upon them. In the interest of justice, a final opportunity was granted to the Respondent to file its Reply within an extended period of seven (7) days.

3.3. At the hearing held on 08.06.2026, the Ld. Counsel for the Respondent requested a further grant of three (3) days' time to file the Reply and voluntarily offered to deposit cost of ₹2,00,000/- (Rupees Two Lakh only) into the Prime Minister’s National Relief Fund (PMNRF) within three (3) days. Subject to the deposit of the said amount, the Respondent was granted an extension of three (3) days to file its Reply, with the explicit condition that no further extensions would be entertained. The Applicant was directed to file a rejoinder within 7 days from the date of receipt of reply. Further the Corporate Debtor and Applicant were directed to file Written Submissions within a period of 3 days thereafter.

3.4. During the hearing held on 29.06.2026, it was observed that a Reply had been e-filed on 11.06.2026; however, it was marked as "under defects" on the DMS. Furthermore, no representative appeared on behalf of the Respondent, leaving it unverified whether the direction to deposit costs had been complied with. The Respondent had also failed to file its Written Submissions. Consequently, the Respondent was directed once again to file its Written Submissions within seven (7) days and to ensure appearance on the next date of hearing, failing which appropriate orders would be passed.

3.5. During the course of the hearing held on 07.07.2026, it was observed that the Respondent had neither filed its Written Submissions nor cured the defects in the Reply e-filed on 11.06.2026. Furthermore, no proof concerning the deposition of costs, as previously directed, was brought on record. It was also noted that none appeared on behalf of the Respondent at the said hearing . In view of the persistent non-compliance and continued disobedience of the orders of this Tribunal, the Reply filed by the Respondent was disregarded.

**4. <u>REJOINDER</u>**

4.1. The Affidavit in rejoinder dated 20.06.2026 was filed by one Rohit Pradeep Gulkari stated to be the Authorised Representative of the Applicant.

4.2. It was observed that the Applicant had denied the contentions raised by the Corporate Debtor. However, since the Reply filed by the Corporate Debtor was already disregarded vide Order dated 07.07.2026, the Rejoinder was not taken into consideration by this Tribunal.

**5. <u>WRITTEN SUBMISSIONS (FC)</u>**

The Financial Creditor has relied on the following judgements delivered by the Hon'ble Supreme Court of India :-

a. Laxmi Pat Surana v. Union Bank of India

b. Asset Reconstruction Company (India) Limited v. Bishal Jaiswal

c. Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy

d. B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates,

e. Innoventive Industries Ltd. v. ICICI Bank

f. Swiss Ribbons v. Union of India

## 6. ANALYSIS AND FINDINGS

6.1. We have considered the pleadings in the matter and have heard the Ld. Counsels for the parties.

6.2. On perusal of the documents it is observed that the Applicant sanctioned a term loan of Rs.19.87 Crore in Non CRE Facility and an amount of Rs.6.43 crore in CRE facility aggregating to a total amount of Rs. 26.30 Crore to the Corporate Debtor, which was to be repaid in 84 months equated monthly instalments vide sanction letter dated 15.09.2012. Both parties executed the Loan Agreement on 17.09.2012.

6.3. The facility was secured vide memorandum of deposit of title deed dated 17.09.2012 for the property situated at Plot no. 197 Wardhaman Nagar, old Bagadganj, Nagpur.

6.4. As per the Statement of Accounts, it is observed that the loan amount came to be disbursed on 17.09.2012 and 27.09.2012 . The Applicant has also attached Certificate under Bankers Books Evidence Act 1891 which supports the disbursements.

6.5. The Applicant has placed on record NPA certificate which states that account of the Corporate Debtor was declared as Non-Performing Asset on 29.06.2018. Thereafter the Applicant issued a demand Notice dated 16.07.2018 under

Section 13(2) of the SARFAESI Act 2002, however the Corporate Debtor has not paid the outstanding till date.

6.6. Furthermore, a bare perusal of Explanation II to the amended Section 7 sub section (5) of the Insolvency and Bankruptcy Code 2016 reveals that where a financial institution produces a record of default registered with an Information Utility, such record shall be deemed sufficient for the Adjudicating Authority to ascertain the existence of debt and default. In the instant case, the Applicant—being a Scheduled Bank i.e. a financial institution within the meaning of Section 2(14)(a) of the Code—has produced the NeSL Form D, which reflects the status of authentication of default as **'AUTHENTICATED**.' Section 7 of the Code, as amended, is reproduced hereunder:"

**“Section 7: Initiation of corporate insolvency resolution process by financial creditor.**

*(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

*[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:*

*Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than* *one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:*

*Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]*

*Explanation. —For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

*(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*

*(3) The financial creditor shall, along with the application furnish—*

> *(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
>
> *(b) the name of the resolution professional proposed to act as an interim resolution professional; and*
>
> *(c) any other information as may be specified by the Board.*

*(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).*

*[(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

> *(a) admit the application, if it is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceeding pending against the proposed resolution professional; or*
>
> *(b) reject the application, if it is satisfied that a default has not occurred or the application under sub-section (2) is incomplete or a disciplinary proceeding is pending against the proposed resolution professional:*

*Provided that the Adjudicating Authority shall, before rejecting the application under clause (b), give a notice to the applicant to rectify the defect in his application within seven days from the date of receipt of such notice from the Adjudicating Authority:*

*Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of the application under sub-section (2), it shall record the reasons for such delay in writing.*

*Explanation I.—For the purposes of this sub-section, it is hereby clarified that where the requirements under clause (a) have been complied with, no other ground shall be considered to reject an application filed under this section.*

*Explanation II. <u>—For the removal of doubts, it is hereby clarified that where a record of default in respect of a financial debt owed to a financial institution recorded with the information utility has been furnished along with the application filed by such financial institution under this section, such record shall be considered sufficient for the Adjudicating Authority to ascertain the existence of default under this section.]</u>*

*(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).*

*(7) The Adjudicating Authority shall communicate—*

*(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;*

*(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."*

6.7. As per the scheme of the Code, at the time of admission, this Tribunal shall consider whether the debt is due and payable and whether the same is under default or not. Hence in our considered view the Financial Creditor has placed enough evidence and documents including copy of the sanction letter, Copies of Memorandum of Deposit of Title Deeds, Letter of Guarantee, General Hypothecation Agreement, Statement of Account along with Certificate under Bankers Books Evidence Act 1891 and more particularly Record of Default issued by NeSL, which demonstrates the amount in default to be Rs.10.30 Crore Rupees and the Status of Authentication of Default as "**AUTHENTICATED**" thus satisfying the requirement of Explanation -II to Section 7 sub section 5 of the Code to show that a financial debt is due which is way above the threshold of One Crore Rupees, which is payable to the Financial Creditor and the same is defaulted by the Corporate Debtor.

6.8. It is observed that the original date of default is 02.04.2018. Subsequently, the Corporate Debtor issued One Time Settlement (OTS) letter dated 21.11.2020 which extended the limitation till 21.11.2023. Further, again vide OTS letter dated 14.10.2021, the limitation was again extended till

13.10.2024.Furthermore, in terms of the directions issued by the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No. 3 of 2020*, the period from 15.03.2020 to 28.02.2022 stands excluded for the purpose of computing limitation. As the period of limitation was subsisting as on 15.03.2020, the Financial Creditor is entitled to the benefit of the said exclusion.

6.9. It is further evident from the record that prior to the expiry of the extended period of limitation, the Corporate Debtor submitted a fresh OTS proposal dated 13.02.2025, seeking settlement of its outstanding dues. The said OTS proposal contains an unequivocal acknowledgment of the subsisting liability of the Corporate Debtor, thereby constituting a valid acknowledgment under Section 18 of the Limitation Act, 1963. Consequently, a fresh period of limitation commenced with effect from 13.02.2025, remaining available up to 13.02.2028. Therefore, the present Company Petition, having been filed on 13.02.2026 , is well within the period of limitation.

This Computation in regard to limitation period is as given below:

| **Particulars** | **Date** | **Effect of limitation** |
|---|---|---|
| Date of default | 02.04.2018 | Cause of action accrued for filing petition under section 7 |
| Original limitation under Article 137 of the Limitation Act. | 02.04.2018 to 01.04.2021 | Initial Period of three years available to FC for filing Application under Section 7. |
| OTS proposal submitted by the Corporate Debtor | 21.11.2020 | OTS proposal constitutes acknowledgement of debt under Section 18 of limitation act and extends limitation. |

| | | |
|---|---|---|
| Fresh Limitation after OTS | 21.11.2020 to 20.11.2023 | Fresh three-year limitation commenced |
| OTS proposal submitted by the Corporate Debtor | 14.10.2021 | OTS proposal constitutes acknowledgement of debt under Section 18 of limitation act and extends limitation. |
| Fresh Limitation after OTS | 14.10.2021 to 13.10.2024 | Fresh three-year limitation commenced |
| Exclusion period | 14.10.2021 to 28.02.2022 | Period from 14.10.2021 to 28.02.2022 will be excluded pursuant to Suo Motu Order of Hon’ble Supreme Court. |
| Extended Limitation after Applying Suo Motu Order | 01.03.2022 to 28.02.2025 | FC became entitled to benefit of exclusion of limitation period. |
| OTS proposal submitted by the Corporate Debtor | 13.02.2025 | OTS proposal constitutes acknowledgement of debt under Section 18 of limitation act and extends limitation |
| Fresh Limitation after OTS | 13.02.2025 To 12.02.2028 | Fresh three-year limitation commenced |
| Date of filing present Company Petition | 13.02.2026 | Petition filed well within the subsisting limitation period |

6.10. In regard to the above computation of limitation, this Tribunal has relied upon the judgement of Hon'ble NCLAT in Dinesh G Jaiswal vs. Punjab National Bank, Asset Recovery Branch and Anr. (2022) ibclaw.in 802 NCLAT Wherein it has been held that OTS and financial account statements constitute valid acknowledgment of debt and extends limitation period. The relevant abstract of the judgement is reproduced below: -

> *"26. In view of the law laid down by the Hon'ble Supreme Court in ITC Limited (supra), we hold that the offer of one Time Settlement (OTS) made by the Corporate Debtor to the Financial Creditor constitutes an acknowledgement of liability within the meaning of section 18 of the Limitation Act, 1963. The Judgment of the Hon'ble Allahabad High Court in Shibcharan Das (supra) must be held to be inapplicable in view of the judgment of the Hon'ble Supreme Court in ITC Limited. Further the order of the Hon'ble NCLAT discussed in previous paras directly relates to this matter and can be a continuous cause of action as well. 1 (2021) 10 SCC 330 2 2022 SCC OnLine NCLAT 4237 4*
>
> *27. In the light of the above discussion and the fact that the Corporate Debtor in its financial statements for the F.Y. 2014-2015 and F.Y. 2015-2016 filed with the Ministry of Corporate Affairs acknowledges the liability towards the Financial Creditor; and also, in its letter dated 23.02.2017 submitted a proposal for one-time settlement of dues of the Financial Creditor, IDBI Bank Limited and Bank of India, which was also revised on 15.09.2018.*
>
> *28.Therefore, we hold that the petition filed by the Financial Creditor is within limitation."*

6.11. This Tribunal has also relied upon the judgement of Hon'ble Supreme Court in the matter of **Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors. Civil Appeal No(s). 2211/2024,** wherein the Hon'ble Supreme Court 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</u>*

*process by a financial creditor which has been succinctly summed up in Innoventive (supra):*

*"30…… in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

*33. Reiterating the ratio in Innoventive (supra), this Court in ES Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd. [(2021) ibclaw.in 173 SC]32 held as follows: "34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."*

*34. In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under Section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company.*

*The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is "to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."*

*35. The Appellant has heavily relied on Vidarbha (supra) to argue that the Adjudicating Authority has ample discretion to apply its mind to relevant factors including the feasibility of initiation of insolvency process notwithstanding the existence of default on a debt due and payable by the Corporate Debtor. In Vidarbha (supra), this Court observed:-*

*"61. In our view, the Appellate Authority (NCLAT) erred in holding that the adjudicating authority (NCLT) was only required to see whether there had been a debt and the corporate debtor had defaulted in making repayment*

*of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The adjudicating authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of Aptel referred to above and the overall financial health and viability of the corporate debtor under its existing management.*

*……………………………………………………………………*

*90. We are clearly of the view that the adjudicating authority (NCLT) as also the Appellate Tribunal (NCLAT) fell in error in holding that once it was found that a debt existed and a corporate debtor was in default in payment of the debt there would be no option to the adjudicating authority (NCLT) but to admit the petition under Section 7 IBC."*

*36. However, in review, this Court clarified that observations made in Paragraph 90 are restricted to the facts of Vidarbha (supra):-*

*"6. The elucidation in para 90 and other paragraphs [of the judgment under review] were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."*

*37. Finally, the apparent dichotomy between Innoventive (supra) and Vidarbha (supra) was set at rest in M. Suresh Kumar Reddy (supra), wherein this Court observed: "14. Thus, it was clarified by the order in review that the decision in Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in Innoventive Industries and E.S. Krishnamurthy. The view taken in Innoventive Industries still holds good."*

*38. In light of the ratio in M. Suresh Kumar Reddy (supra) there is no cavil that the ratio in Innoventive (supra) lays down the correct proposition of law and the observations in Vidarbha (supra) were made in the facts of the case and do not operate as binding precedent.*

*39. Even otherwise on facts, Vidarbha (supra) does not come to the aid of the Appellant. In Vidarbha (supra), this Court had taken note of an award passed by APTEL in favour of the corporate debtor which far exceeded the claim of the financial creditor, and held in the setting of such facts, initiation of CIRP was unwarranted. In the present case, Appellant's contention regarding Corporate Debtor's viability is highly dubious. Though the Corporate Debtor strenuously demonstrates its commercial viability, the NCLAT has noted that the extent of outstanding* *liability as on 02.01.2024 was Rs. 3103.31 crore, which far exceeds the bills raised on WBSEDCL to the tune of Rs 906 crore and EBITDA of Rs. 20 crore per month during the CIRP.*

*40. For these reasons, we are of the opinion the admission of the Section 7 application was lawful and does not call for interference."*

*(emphasis wherever required supplied)*

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 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.

b. When the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor.

c. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5).

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

e. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more.

6.12. In view of the above , the Applicant has successfully demonstrated the existence of a financial debt , as the transaction involves money borrowed against the payment of interest under section 5(8)(a) of IBC 2016, the occurrence of default, which is way above the threshold as stipulated under Section 4 of the Code , and continuing nature of such default supported by clear documentary evidence.

6.13. Financial Creditor has also proposed the name of an Insolvency Professional (IP) i.e. Ms. Megha Agarwal, having Registration No. IBBI/IPA-001/IP-P-01456/2018-2019/12272 and Authorization for Assignment (AFA) which is valid up to 30.06.2027 as per IBBI portal, as the proposed IRP and as per the Form 2 attached along with the Application , no disciplinary proceedings are going on against the said IP. Further, this Application is complete as all the required documents have been attached along with the Application. Accordingly, the present Application is fit for admission under Section 7 of the IBC, 2016.

6.14. We make it clear that at this stage we have not crystallised the amount as claimed in this Application; the same is left to be collated by the IRP.

## ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) 150/MB/2026 filed under Section 7 of IBC, 2016, by Union Bank of India, the Applicant (FC) ,for initiating CIRP in respect of Indo Pacific Projects Limited , the Corporate Debtor, is **Admitted.**

We further declare a moratorium under Section 14 of IBC, 2016 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 the 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, and;

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 IBC 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 immediately as specified under Section 13 of the IBC 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**,** Ms. Megha Agarwal , having Registration No. IBBI/IPA-001/IP-P-01456/2018-2019/12272 and **e-mail address** ip.meghaagrawal@gmail.com having valid Authorisation for Assignment up to 30.06.2027 (as per IBBI site) as the IRP to carry out the functions under the IBC.

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 IBC. The officers and managers of the Corporate Debtor are directed to provide all 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 IBC 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 Financial Creditor is directed to deposit a sum of Rs.**3,00,000**/- (Three Lakh Rupees) 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 Financial Creditor on priority upon the funds becoming 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, Mumbai Maharashtra, 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 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 Financial Creditor, 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/-**

**NILESH SHARMA**
**MEMBER (JUDICIAL)**

**Sd/-**

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

//Sumant//