NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1

C.P. (IB)/1370(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **25.08.2026**

NAME OF THE PARTIES**:-**

Sangli District Central Co-operative Bank Limited

v/s

Swapnapurti Sugar Limited

Under Section 7 of the IBC

ORDER

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

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

//Sumant//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/1370/MB/2025

[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]

Sangli District Central Co-operative Bank Limited

Registration No. 19169

RBI License No. RPCD-(MRO)-1258/18.0/038/2011-12

Padmabhushan Vasantdada Patil Marg,

Karaveer Bhaurao Patil Chowk,

Sangli-416416

…Financial Creditor

V/s

Swapnapurti Sugar Limited

[CIN No. U15314PN2017PLC170053]

Plot No.81/82, Shivaji Housing Society,

Madhavnagar Road

Sangli-416416

...Corporate Debtor

Pronounced: 25.08.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv.Mr. Ayush Kothari,a/w Adv. Ms. Niharika Jalan i/b Baraka Legal LLP

For Respondent: Adv. Mr. Nikhil Warange

ORDER

[PER: CORAM]

1. BACKGROUND

1.1. C.P. (IB) No.1370/MB/2025 (Application) was filed on 09.12.2025 by **Sangli District Central Co-operative Bank Limited** the Financial Creditor (FC), 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 **Swapnapurti Sugar Limited** the Corporate Debtor having CIN No.U15314PN2017PLC170053

1.2. This Application has been affirmed by one Shri Sudhir Madhukar Kate, authorised signatory and I/c General Manager (Admin-Banking) of the Applicant vide Board Resolution passed on 28.09.2022.

1.3. As per Part IV of the Application, the amount claimed to be in default is Rs.38,71,15,232/- (Rupees Thirty-Eight Crore Seventy-One Lakhs Fifteen Thousand and Two Hundred Thirty-Two Only).

1.4. The date of default is stated as 21.08.2022.

1.5. The Applicant has proposed the name of Mr. Mahesh Bagla, an Insolvency Professional , having Registration No. IBBI/IPA-002/IP-N00689/2018-2019/12207, 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. <u>CONTENTIONS OF APPLICANT (FC)</u>

2.1. It is stated that the Corporate Debtor approached the Financial Creditor for a loan of Rs. 23 Crores for the purpose of the business development and for its growth. Pursuant to that the Financial Creditor sanctioned the loan vide sanction letter dated 31 March,2020, for a period of seven years and accordingly the amount was disbursed to the Corporate Debtor on the same date.

2.2. Simultaneously, the Corporate Debtor also executed the following documents being:

(i) Loan Agreement dated 31st March,2020

(ii) Promissory Note dated 31st March,2020

(iii) Deed of Hypothecation dated 31st March,2020

(iv) Mortgage Deed dated 31st March,2020

(v) Mortgage Deed dated 3rd August,2020

(vi) Corporate Guarantee dated 10th November,2020

(vii) Undertaking dated 10th November,2020

2.3. Pursuant to the execution of the documents and disbursement of the amount, the Corporate Debtor failed to make monthly payments.

2.4. It is stated that the Financial Creditor thereafter sent various notices to the Corporate Debtor requesting them to pay the amount in arrears and despite several efforts made by the Financial Creditor to recover the outstanding arrears from the Corporate Debtor, no response was ever received from the Corporate Debtor.

2.5. Thereafter, the Financial Creditor issued a notice dated 21st June,2022, under Section 13(2) of the SARFAESI Act,2002, and on no response being received, issued the Possession Notice dated 23rd September,2022, under Section 13(4) of the SARFAESI Act,2002.

2.6. Further thereafter, the Financial Creditor has on various occasions written to the Corporate Debtor requesting it to clear the outstanding amounts. However, as on date, no response has ever been received

2.7. It is stated that the Corporate Debtor has acknowledged its debt in the balance sheet for the year 2022-2023, which further extends the period of limitation and in view of the same, the present petition is filed well within the period of limitation.

2.8. Further it stated that the date on which the default has occurred is calculated on the basis of the notice under Section 13(2) of the SARFAESI Act, 2002, which was sent by the Financial Creditor to the Corporate Debtor on 21st June,2022, which stated that the Borrower i.e. the Corporate Debtor and the directors to pay the outstanding amount and discharge their liability within 60 days from the date of the notice. Hence, the date of default is ascertained by the expiry of the 60 days of the demand notice dated 21st June,2022.

2.9. Vide Additional Affidavit dated 31.12.2025, the Applicant has placed Copies of Certificate under the Banker's Book of Evidence Act 1891 on record.

2.10. The Applicant has 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 31st March,2020

c) Copy of the Loan Bond dated 31st March,2020

d) Copy of the Promissory Note dated 31st March 2020

e) Copy of the Mortgage Deed dated 3rd August,2020

f) Copy of the Corporate Guarantee dated 10th November,2020

g) Copy of the Undertaking dated 10th November,2020

h) Copies of the various demand notices issued by the Financial Creditor

i) Copy of the Demand Notice u/s 13(2) SARFAESI Act,2002 dated 21st June,2022

j) Copy of the Possession Notice u/s 13(4) SARFAESI Act ,2002 dated 23'd September,2022

k) Copies of the letters/notices dated 9th February,2023, and 7th June,2023, issued by the Financial Creditor to the Corporate Debtor for payment of outstanding.

l) Copies of the Balance Sheet of the Corporate Debtor for the Financial year 2019-2020,2020-21 ,2021 -22,2022-2023.

m) NeSL Report

n) Account Statement of each Loan

o) CIBIL Report

3. REPLY BY CORPORATE DEBTOR

3.1. Affidavit in reply was filed on 21.02.2026 by the Respondent through Mr.Anil Lakshman Kasare, who is stated to be an Director of the Corporate Debtor.

3.2. It is stated that the petition is not filed by authorised person as the Company Petition has been instituted, signed, and verified by one Mr. Sudhir Madhukar Kate, claiming to be the authorized representative of the Petitioner/Financial Creditor. That in support of the purported authority of the said Mr. Sudhir Madhukar Kate, the Financial Creditor has placed on record a copy of a Board Resolution, annexed as Annexure-A to the main Petition. That a careful and meticulous perusal of the said Board Resolution (Annexure-A) reveals that the Board of Directors of the Financial Creditor has specifically authorized only five named individuals to initiate legal proceedings, including proceedings under the Code, on its behalf. The said resolution does not, either explicitly or implicitly, confer any such authority upon Mr. Sudhir Madhukar Kate. That the name of Mr. Sudhir Madhukar Kate is conspicuously absent from the list of persons empowered by the said Board Resolution to file the present Petition. It is submitted that the authority granted by the Board is specific and cannot be delegated or assumed by any person not explicitly named therein. That in the absence of a valid and specific authorization in favour of Mr. Sudhir Madhukar Kate, the present Petition has been filed by a person having no legal standing or authority to do so.

3.3. The institution of the Petition is, therefore, fundamentally defective, non-est in the eyes of the law, and a nullity from its very inception.

3.4. It is stated that petition is barred by limitation as date of default, as specifically stated by the Petitioner in the present Petition, is 21st August 2022. Even assuming, without admitting, that the said date is correct, the limitation period prescribed under Article 137 of the Limitation Act, 1963 being three years, the Petition ought to have been filed on or before 21st August 2025. However, the present Petition has been filed only on 09th December 2025, which is clearly beyond the prescribed period of limitation and is therefore barred by law. Consequently, the Petition is liable to be dismissed on this ground alone

3.5. It is further submitted that the present Petition is hopelessly barred by limitation, and the Financial Creditor has deliberately and mischievously attempted to project the date of default as 21st August 2022 by conveniently computing the same from the expiry of the 60-day period under Section 13(2) of the SARFAESI Act, 2002, which is legally impermissible for determining default under the Insolvency and Bankruptcy Code. The present Petition, filed in December 2025, is thus filed well beyond the statutory period of three years under Article 137 of the Limitation Act, 1963. The reliance placed on the balance sheet for the year 2022–2023 is merely a desperate attempt to revive a time-barred debt, which is impermissible in law

3.6. It is stated that the amount of Rs. 38,71,15,232/- claimed by the Financial Creditor is a disputed, un-adjudicated, and hypothetical figure. The Financial Creditor has levied exorbitant, usurious, and penal interest, which is contrary to the terms of the loan agreement and the master circulars issued by the Reserve Bank of India. The Corporate Debtor has, on multiple occasions, disputed the statement of accounts provided by the Financial Creditor. In the absence of a clearly admitted and ascertained financial debt which is due and payable, the present Petition under Section 7 of the Code is not maintainable

3.7. It is submitted that the Financial Creditor is guilty of forum shopping and is pursuing parallel remedies with a malicious intent. The Financial Creditor has already initiated recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, by issuing a demand notice dated 21st June, 2022, under Section 13(2) and a possession notice dated 23rd September, 2022, under Section 13(4). Having already invoked a specific statutory remedy for recovery against the secured assets, the initiation of the Corporate Insolvency Resolution Process (CIRP) is a coercive measure intended to bring the Corporate Debtor to its knees. The value of the mortgaged and hypothecated assets is more than sufficient to satisfy the legitimate dues of the Financial Creditor, and this Petition is merely a tool for harassment.

3.8. Further it is stated that the Petitioner has also filed a case before Hon'ble Cooperative Court, Sangli against the Respondent Corporate Debtor bearing No. Co-operative Case No. 88 OF 2025 titled as Sangli Jitha Madhyavarti Sahakari Bank Ltd. Vs. Swapnapurti Sugars Ltd, Sangli.

3.9. It is submitted that the alleged financial debt was never disbursed to the present Corporate Debtor, and therefore no financial liability can be fastened upon it under the provisions of the Insolvency and Bankruptcy Code, 2016. As per the sanction letter dated 31st March 2020, particularly Condition No. 3 thereof, the loan amount was disbursed directly into the bank account of Vasantdada Shetkari Sakhar Karkhana(herein after referred to as Vasantdada), maintained with Bank of India, Madhav Nagar Branch, Sangli.

3.10. The Corporate Debtor neither received the loan proceeds nor derived any benefit or utilization thereof. In such circumstances, the essential ingredient of a "financial debt" being disbursed against the consideration for time value of money to the Corporate Debtor is absent.

3.11. It is further submitted that the mortgage over the properties in relation to the said loan also belong to the said Vasantdada and not to the present Corporate Debtor.

The transaction, in substance and effect, pertains to a third party and not to the Respondent herein. Therefore, the Corporate Debtor cannot be treated as a borrower or defaulter in respect of the said facility, and the present Petition under Section 7 of the Code is misconceived, not maintainable, and liable to be dismissed.

3.12. It is stated that the Financial Creditor has not approached this Hon'ble Tribunal with clean hands and has deliberately suppressed material facts. The Corporate Debtor had submitted one-time settlement (OTS) proposal, which was arbitrarily and unreasonably rejected by the Financial Creditor without providing any cogent reasons. The Financial Creditor has conveniently omitted to mention the various rounds of negotiations and restructuring discussions that took place between the parties. This suppression demonstrates the maIa fide intent of the Financial Creditor, which is not interested in resolution but only in the corporate death of the Corporate Debtor.

3.13. It is submitted that the Corporate Debtor is a solvent, operational, and economically viable going concern, and the present Petition has been filed in complete disregard of the true nature of the transaction. The Corporate Debtor continues to operate as a significant industrial undertaking and contributes substantially to the local agrarian economy, employment generation, and the interests of farmers, workers, suppliers, and other stakeholders. Any temporary financial stress, if at all, arose due to adverse industry-wide conditions, which affected the entire sector and cannot be construed as insolvency within the meaning of the Insolvency and Bankruptcy Code, 2016. Initiating CIRP against a viable company would defeat the very object of the Code, which is intended for resolution of genuine insolvency and not as a substitute for recovery proceedings.

3.14. The Respondent has relied on the following judgements.

a. Anita Jindal v. Jindal Build tech (P .) Ltd. , [2023] 148 taxmann.com 398 (NCLAT – New Delhi)

b. Vidarbha Industries Power Limited v. Axis Bank Limited (Civil Appeal No. 4633 of 2021)

c. Palogix Infrastructure Private Limited vs ICICI Bank Limited

4. REJOINDER

4.1. The Affidavit in rejoinder dated 18.03.2026 is filed by one Sudhir Madhukar Kate stated to be the General Manager and the Authorised Representative of the Company .

4.2. It is stated that the petition is well within limitation as the present petition is filed well within the period of limitation as there is in fact acknowledgment in the Balance Sheet of the year 2022-2023 wherein the Corporate Debtor has acknowledged the outstanding amounts under the heading of "Long Term Liabilities -Secured Loans" and the said balance sheet was signed on 1 April, 2025 by the Directors of the Corporate Debtor.

4.3. It is stated that it is a settled provision of the law that an acknowledgment of the debt in the Balance Sheet is deemed to be a valid acknowledgment which extends the period of limitation. Acknowledgement of debt not only saves limitation period but also offers a cause of action to lay claim. It is submitted that as per Clause (b) of the Section 18 of the Limitation Act, 1983, the word signed means signed either personally or by an agent duly authorised in this behalf. In the present case, the balance sheet has been signed by the director of the Corporate Debtor and the director of the Corporate Debtor is considered as an agent for the purposes of the Section 18 of the Limitation Act, 1983. Therefore, in light of the said averments, it can be perused that there is an acknowledgement of the debt by the Corporate Debtor and the defences raised by the Corporate Debtor are moonshine defences to evade its liability and therefore, the Petition ought to be admitted as it is well within the period of limitation.

4.4. It is stated that the date of default is set out as 21st August, 2022 which is determined on the basis of the Section 13(2) notice dated 21st June, 2022 issued under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act, 2002"). As per the provisions laid down in the said act, when the account of the borrower (i.e. the Corporate Debtor in the present case), is classified as Non-Performing Asset ("NPA") due to any default in repayment of the secured debt, then the secured creditor may issue a notice in writing under Section 13(2) of the SARFAESI Act, 2002 to discharge in full the liabilities within sixty days from the date of the notice. In any event, the date of default is to determine limitation and there is admittedly default.

4.5. Similarly, in the present case, the notice under Section 13(2) of the SARFAESI Act, 2002 dated 21st June, 2022 was issued by the Financial Creditor to the Corporate Debtor which clearly states that the Corporate Debtor should make the entire payment and discharge the debts within sixty days from the date of the notice. However, the Corporate Debtor failed to make any payments to the Financial Creditor within sixty days from the date of the said notice. It is further submitted that after the expiry of the mandated sixty days period from the date of the notice and upon the failure of the Corporate Debtor to repay the outstanding amount, the default by the Corporate Debtor has occurred and therefore the date of default is considered as 21st August, 2022.

4.6. The loan facilities were demanded by the invocation notice/ SARFAESI notice therefore, the date of expiry of demand is taken as date of default. Though the NPA have triggered prior to notice but the date of default considered by the Financial Creditor is the failure of the Corporate Debtor to pay on demand.

4.7. It is submitted that under the Code, 2016, the word "default" is defined in very wide terms meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount and it is the scheme of the Code to ensure that when a default takes place i.e. when a debt becomes due and is not paid, the insolvency resolution process commences and thus the present petition is ought to be admitted as default has occurred and the debt is due and remains unpaid till date.

4.8. Further it is submitted that present petition is duly signed and authorised by an authorised person. It is further stated that upon a bare perusal of the Board Resolution dated 28 September, 2022 (annexed as Annexure A in the Petition - Vol 1), the Board Resolution clearly states that the authority is given to the officers interalia the General Manager (Administration-Banking) and five named individuals. It is submitted that Mr. Sudhir Kate who has signed the petition is an employee of the Financial Creditor who holds the position of the General Manager (Administration-Banking) and therefore, it cannot be contended that the Petition is filed without valid authorisation.

4.9. It is further submitted that as per the same board resolution, further authorisation was given to the authorised officers including Mr. Sudhir Kate to file new claims, appeals, applications, writ petitions, etc, to see compliance, and to file and accept pleadings to demand/accept copies, withdraw claims, etc. It is therefore submitted that the objection regarding the authority of Mr. Sudhir Kate is completely without merit and cannot be relied upon to challenge the maintainability of the Petition as valid authority has been conferred upon Mr. Sudhir Kate to file the present Petition.

4.10. Further it is submits that on perusal of the reply, it shows that the Corporate Debtor is only objecting to the interest component. In the absence of any specific objections against the principal amount, the same can be assumed as acknowledged and accepted. It is further submitted that the interest levied upon the Corporate Debtor is according to the terms and conditions of the sanction letter which was agreed by the Corporate Debtor. It is submitted that the only dispute of the Corporate Debtor is on the interest levied by the Financial Creditor, however, the said dispute raised by the Corporate Debtor is without any merit and cannot be relied upon to deny the claim for interest. In the present case, the outstanding principal amount is in excess of the threshold limit as provided under the provisions of the Code, 2016 and further if such interest is payable or not will be assessed by the Interim Resolution Professional ("IRP") at the time of collating the claims.

4.11. It is further stated that the Corporate Debtor is making false statements on oath as the Corporate Debtor has never disputed the statement of accounts and assuming without admitting if such disputes has been raised by the Corporate Debtor then the Corporate Debtor is put to strict proof to produce such evidences or correspondences disputing the Statement of Accounts. In any event, such disputes are not material for deciding admission under Section 7 of the Code, 2016.

4.12. It is stated that the actions under the SARFAESI Act, 2002 does not create any obstruction for filing of the Petition under Section 7 of the Code, 2016. It is submitted that the proceedings under the Code, 2016 cannot be said to be parallel proceedings since the Petition under Section 7 of the Code, 2016 are filed to bring resolution for the Corporate Debtor and on the other hand the proceedings under the SARFAESI Act, 2002 are for recovery of the amount which is due and payable to the Financial Creditor. It is further submitted that mere pendency of the case before the Hon'ble Debt Recovery Tribunal for adjudicating of such disputed amount cannot be a ground to reject the Petition under Section 7 of the Code, 2016.

4.13. The Applicant further submits that one of the terms and conditions of the sanction letter dated 31 March, 2020 clearly states that the sanctioned loan amount ie. Rs. 23,00,00,000/- (Rupees Twenty-Three Crores Only) will be transferred to the loan account of Vasantdada and charge is to be created on the property owned by Vasantdada and the same was accepted by the Corporate Debtor as evident from the sanction letter and no dispute was raised by the Corporate Debtor to the same and also in the Mortgage Deed dated 3rd August, 2020 executed between the parties no dispute was raised. It is on instruction and request of the Corporate Debtor that the amount is disbursed and therefore one cannot contend that the amount is not disbursed.

4.14. It is submitted that the disbursal of the loan is required but the definition does not use the expression that the disbursal should be made to the Corporate Debtor only and it can clearly be implied that any disbursement made on behalf of the Corporate Debtor or at the instructions of the Corporate Debtor will tantamount to disbursal made to the Corporate Debtor. In the present case, the loan amount was disbursed into the account of Vasantdada upon the acceptance by the Corporate Debtor and pursuant to that utilized by the Corporate Debtor, thus it can be implied that any disbursal made on behalf of the Corporate Debtor or at the instructions of the Corporate Debtor will tantamount to the disbursal made to the Corporate Debtor and therefore it assumes the character of the financial debt.

4.15. The Applicant states that the rejection of the One Time Settlement ("OTS") proposal, if any, is upto the discretion of the Financial Creditor and the Corporate Debtor cannot raise disputes on the same. It is further submitted that the Corporate Debtor is raising frivolous argument that the Financial Creditor has suppressed the material facts regarding the OTS, whereas, the Corporate Debtor has also conveniently not annexed the OTS proposal to further substantiate its arguments.

4.16. Further the plea of "solvency" is wholly irrelevant to the present facts and circumstances. If the Corporate Debtor is a solvent company, the Corporate Debtor may be directed to pay the entire outstanding amount owed to the Financial Creditor to demonstrate its solvency.

5. ADDITIONAL AFFIDAVIT (FC)

5.1. Additional Affidavit dated 10.06.2026 was filed by the Applicant through Mr. Sudhir Madhukar Kate, who is stated to be an authorized signatory and I/c general Manager (Admin-Banking) of the Applicant.

5.2. At the hearing held on 06.05.2026, it was observed that the loan amount of ₹23 crore, in respect of which the present application has been filed, appears to have been disbursed in favour of another entity, namely M/s. Vasantdada Sahakari Sakhar Karkhana.

5.3. The Applicant was thereafter directed to file an additional affidavit clarifying whether the outstanding amount has been disbursed in favour of another entity and, if so, whether such disbursement was made pursuant to any instructions or authorization issued by the Corporate Debtor for payment to a third party. It was also directed to furnish relevant proof of disbursement.

5.4. The Applicant vide Additional Affidavit states that the amount was disbursed based on the terms as set out and agreed upon in the Sanction Letter dated 31st March, 2020. The relevant paragraphs of the Sanction Letter (translated Copy) are reproduced below:-

> *"As per the decision taken in the Board of Directors meeting of the Bank dated 31/03/2020. a medium-term loan is being sanctioned to your company under the Commercial Direct Lending Scheme on the following terms and conditions..."*

> *".1. For the loan, the company and the factory jointly have to create a first charge of the bank through a registered mortgage deed at their own cost on the land admeasuring 1.43.66 H.R.Sq.Mtr. bearing New Survey No. 128/1 (Old Survey No. 183/1) within the limits of Sangli Miraj Kupwada Municipal Corporation, Sangli City, owned by Vasantdada Shetkari Sahakari Sakhar Karkhana Ltd, Sangli and*

other immovable property constructed on the said land for the purpose of business growth and other commercial purposes by the company...”

“..3. The sanctioned loan amount will be transferred to the loan account of Vasantdada Shetkari Sahakari Sakahar Karkhana, Bank of India Branch, Madhavnagar. Accordingly, the original certificate of their debt being cleared is to be submitted immediately. The said certificate is to be included in the registered mortgage deed...

4. In compliance of the above condition no 1, the said property is to be mortgaged jointly by Vasanidada Shetkari Sahakari Sakhar Karkhana Ltd, Sangli and the company by way of a registered mortgage deed, reducing the debt burden of Bank of India, Madhavnagar Branch on the said property... "

5.5. It is stated that the terms of the sanction letter were further confirmed by the Corporate Debtor vide its board resolution dated 31st March,2020. The relevant paragraphs of the board resolution are reproduced hereinbelow:

“In accordance with the sanction letter under reference, your bank has sanctioned a loan of Rs. 23,00.00,000/- (Rupees Twenty-Three Crores) 10 our company, Swapnapurti Sugar Limited, Plot No 81. 82, Shibvaji Hsg. Soc, Madhavnagar, Sangli. We are grateful to you for that. We accept terms and conditions Nos. 1 to 30 of the loan sanction letter under reference.”

5.6. It is further submitted that the Corporate Debtor has confirmed receipt of the said amount in the mortgage deed dated 3 August,2020. The relevant paragraphs of the Mortgage Deed are reproduced hereinbelow:

> *"...3) We have a company named Swapnapurti Sugars Ltd, Sangli at Madhavnagar. As we are in need of funds for the purpose of investment in the proposed property, business growth and expansion of our business, we being No.1 Borrower and we being No.2 co-Borrower/ consenting party demanded a medium-term loan from your bank being Sangli District Central Co-operative Bank Ltd. Sangli, Branch Sakhar Karkhana Sangli. Pursuant to our loan demand. you have sanctioned us a medium-term loan of Rs. 23.00,00,000/- (Rupees Twenty-Three Crores Only)..."*

> *"We Party No.1 being the Borrower and executor of deed of mortgage have received the said payment of Rs. 23,00,00,000/- (Rupees Twenty-Three Crores* only). We have no complaint regarding the payment"

5.7. Further it is stated that based on the terms agreed to between the parties the said amount of Rs. 23 Crores was debited to the loan account of the Corporate Debtor simultaneously the same was transferred to the current account of the Corporate Debtor and thereafter transferred to the Head Office account of the Financial Creditor, who in turn paid the same to Bank of India (as payment against the H&T loans taken by Vasantdada)

5.8. The Applicant has placed the following documents along with the Additional Affidavit to support its case.

a. Copy of the Sanction Letter

b. Copy of the letter issued by the Corporate Debtor confirming the terms of the Sanction Letter.

c. Copy of the Mortgage Deed

d. Copy of the Loan Account Statement (relevant page), Current Account statement of the Corporate Debtor, along with the letter issued by the Financial Creditor to Bank of India and the no dues certificate issued by Bank of India.

6. <u>WRITTEN SUBMISSIONS (FC)</u>

The Financial Creditor has relied on the Following Judgement:-

a. Rajeev Kumar Jain vs Uno Minda Limited.

7. <u>WRITTEN SUBMISSION(CD)</u>

7.1. It is stated that the Petitioner's contention that the OTS proposal submitted by the Respondent extends limitation by 3 years is equally untenable. An OTS proposal is submitted on a 'without prejudice' basis and cannot constitute an acknowledgment of liability under Section 18 of the Limitation Act. Further, the Financial Creditor arbitrarily rejected the OTS proposal without any cogent reason, demonstrating mala fide intent to coerce the Respondent rather than genuinely seek resolution.

7.2. It is stated that The Petitioner's reliance on Rajeev Kumar Jain v. Uno Minda Limited is misplaced. In that case, the disbursal was made to an affiliate of the corporate debtor for the debtor's own benefit and use, at its instructions. Here, the disbursal was to a wholly independent third-party entity — a separate cooperative society — to discharge that entity's pre-existing liability with no direct or indirect benefit accruing to the Respondent. The transaction, in substance and effect, is that of a third party and the Respondent cannot be fastened with liability under the Code

7.3. The Respondent has further has relied upon the same argument as recorded in its Reply and for the sake of brevity we are not recording the same herein.

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

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

8.2. On perusal of the documents it is observed that Applicant sanctioned a Medium-Term Loan of Rs. 23 Crore. The repayment period of the said loan was 7 years including a 1-year moratorium period. The first instalment of the loan was to be due on the date 24 months after the loan disbursement (after the expiry of the 1-year moratorium period). Thereafter, the loan was to be repaid in 6 equals annual instalments at an Interest Rate of 11% per annum.

8.3. Further based on the terms agreed to between the parties the said amount of Rs. 23 Crores was debited to the loan account of the Corporate Debtor simultaneously the same was transferred to the current account of the Corporate Debtor and thereafter transferred to the Head Office account of the Financial Creditor, who in turn paid the same to Bank of India as payment against the H&T loans taken by

Vasantdada .The loan agreement was executed by both the parties vide General Agreement dated 31.03.2020.

8.4. Further this financial facility was further secured by various documents including Promissory Note, Mortgage Deed for a property owned by Vasantdada and a Corporate Guarantee and Hypothecation Agreement dated 31.03.2020.

8.5. On perusal of the bank account statement, the funds were disbursed on 31.03.2020. The Applicant has further provided relevant certificates under the Bankers Book Evidence Act 1891 which evidences the Disbursement.

8.6. The Corporate Debtor failed to honour its financial commitment and as a result the Applicant issued a demand notice under Section 13(2) of the SARFAESI Act dated 21.06.2022, calling upon to pay the outstanding amount within a period of 60 days. However, the same has not been paid till date.

8.7. The Corporate Debtor in its reply has not denied the existence of debt or execution of loan agreement. Further neither the Applicant nor the Corporate Debtor has placed on record OTS letter despite pleading of OTS by both the sides.

8.8. As per the scheme of the Code, at the time of admission this Tribunal shall consider whether the debt is due, which is 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 to show that a financial debt is due and payable and the same is defaulted by the Corporate Debtor.

8.9. The Corporate Debtor has contended that the Applicant has deliberately and mischievously attempted to project the date of default as 21st August 2022 by conveniently computing the same upon the expiry of the 60-day period stipulated under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), which is legally impermissible for determining the date of default under the Insolvency and Bankruptcy Code, 2016. In this regard, a perusal of the Sanction Letter annexed at Page Nos. 24 to 30h of the Application reveals that the Term Loan of ₹23 Crore was repayable over a tenure of 7 years, including a 1-year moratorium on interest repayment (charged on a monthly basis). Thereafter, the principal repayment was to commence after 24 months from the date of disbursement, structured in 6 equal annual instalments. Accordingly, the first instalment of principal repayment fell due on 31.03.2022, with the final instalment payable 7 years from the date of disbursement, i.e., on 31.03.2027.

8.10. Admittedly, the Corporate Debtor defaulted in servicing the loan facility by failing to pay the interest in 2020. Consequently, the Applicant issued a statutory notice under Section 13(2) of the SARFAESI Act, 2002, recalling the entire outstanding loan facility upon the expiry of the 60-day demand period. Since the entire financial debt stood recalled by virtue of the said SARFAESI Notice and the Corporate Debtor failed to discharge the debt within the stipulated 60 days, we are of the considered view that the date of default determined upon the expiry of the notice period, i.e., 21st August 2022, is correct.

8.11. One of the principal contentions raised by the Corporate Debtor pertains to the bar of limitation. In this regard, it is observed that the date of default is 21.08.2022, being the date immediately following the expiry of the statutory 60-day period from the issuance of the Demand Notice under Section 13(2) of the SARFAESI Act, 2002. Consequently, the initial period of 3 years for filing the present petition under the Limitation Act, 1963 would have ordinarily expired on 20.08.2025.

8.12. This Tribunal has relied on the judgement of Hon'ble NCLAT in **Dinesh G Jaiswal vs. Punjab National Bank, Asset Recovery Branch and Anr**. Wherein it has been held that OTS and financial account statements constitute valid acknowledgment of debt and extends limitation period. The relevant abstract of the judgement is produced below:-

"26. In view of the law laid down by the Hon'ble Supreme Court in ITC Limited (supra), we hold that the offer of one Time Settlement (OTS) made by the Corporate Debtor to the Financial Creditor constitutes an acknowledgement of liability within the meaning of section 18 of the Limitation Act, 1963. The Judgment of the Hon'ble Allahabad High Court in Shibcharan Das (supra) must be held to be inapplicable in view of the judgment of the Hon'ble Supreme Court in ITC Limited. Further the order of the Hon'ble NCLAT discussed in previous paras directly relates to this matter and can be a continuous cause of action as well. 1 (2021) 10 SCC 330 2 2022 SCC OnLine NCLAT 4237 4

27. <u>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.</u>

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

8.13. This Tribunal has further relied on Hon'ble Supreme Court judgment of **Dena Bank v. C. Shivkumar Reddy, (2021) 10 SCC 330**, wherein it was held that

> *"139 Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim,made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act….Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years.*

8.14. The Applicant has placed on record the Balance Sheet of the Corporate Debtor for the Financial Year 2022–2023 at page No 191 of the Application, wherein the liability has been explicitly acknowledged under the entry *"Long Term Liabilities – Secured Loans."* The outstanding in the said balance sheet dated 31.03.2023 is shown as Rs. 2925.26 Lakh which was duly signed by the Directors of the Corporate Debtor on 01.04.2025, and the same constitutes a valid acknowledgment of debt in writing under Section 18 of the Limitation Act, 1963. The said acknowledgement made on 01.04.2025 i.e. the date on which the said balance sheet is signed on behalf of the Board of Directors of the Corporate Debtor , was within the three-year period from the date of default of 21.08.2022. This acknowledgment extends the period of limitation by 3 years, pushing the final date of limitation to 31.03.2028.

8.15. Considering the facts of this matter and applying the decision of the Hon'ble Supreme Court in Dena Bank(Supra) and Hon'ble NCLAT in Dinesh G Jaiswal (Supra) , we are of the view that the present Application filed on 09.12.2025 is well within limitation period.

8.16. With regard to the contention raised by the Corporate Debtor concerning the maintainability of the petition on the ground of lack of proper authorization, this Adjudicating Authority finds the same to be devoid of merit. A perusal of the record reveals that the Applicant has placed on record the Board Resolution dated 28 September 2022, which explicitly empowers designated officers, including the General Manager (Administration-Banking), along with five other individuals, to execute Vakalatnamas, pleadings, and necessary documents in connection with legal claims before various courts and tribunals. It is further observed that Mr. Sudhir Kate, who has instituted and signed the present petition, is an employee of the Financial Creditor holding the position of General Manager (Administration-Banking). Consequently, in our considered view, the petition has been filed with valid and requisite authorization.

8.17. The reliance placed by the Corporate Debtor on Palogix Infrastructure Private Limited v. ICICI Bank Limited, 2017 SCC OnLine NCLAT 266 in our considered view is misplaced as in that particular case it was held that that general authorisation given to an officer of the financial creditor by means of a power of attorney, would not disentitle such officer to act as the authorised representative of the financial creditor while filing an application under Section 7 of the Code, merely because the authorisation was granted through a power of attorney. However, in the instant case the Board Resolution dated 28 September 2022 specifically empowers various persons holding positions of CEO, General Managers etc. to execute Vakalatnamas, pleadings, and necessary documents in connection with legal claims before various courts and tribunals. The Authorised Signatory i.e. Mr. Sudhir Kate being General Manager (Admin-Banking) has a valid authorization.

8.18. *As* regards the further contention raised by the Corporate Debtor that the financial facility was disbursed to a third party, i.e. *Vasantdada*, and that the Corporate Debtor neither received the loan proceeds nor derived any benefit therefrom, this Adjudicating Authority finds such an argument to be untenable. A perusal of terms and condition at Serial No. 3 of the Sanction Letter dated 31.03.2020 clearly stipulates that the sanctioned loan amount was to be transferred to the loan account of *Vasantdada and a* charge is to be created on the property owned by Vasantdada via a registered mortgage deed. The same was duly accepted by the Corporate Debtor. Furthermore, under the Registered Mortgage Deed dated 03.08.2020 executed among the Applicant, the Corporate Debtor, and *Vasantdada*, the Corporate Debtor (designated therein as Party No. 1) specifically acknowledged the receipt of the sum disbursed by the Applicant to the said entity. Consequently, in our considered view, the disbursement was made pursuant to the explicit instructions and agreement of the Corporate Debtor, and it is no longer open to the Corporate Debtor to contend that there was a lack of disbursement.\

8.19. The Applicant has attached Master Data of the Corporate Debtor at page no. 19 of the Application. Perusal of the same reflects that a charge having Charge ID no. 100382717 was registered on 31.03.2020 for an amount of Rs.23 Crore in favour of the Applicant.

8.20. At this moment this tribunal has relied on the judgement of Hon'ble NCLAT in Rajeev Kumar Jain v. Uno Minda Ltd. wherein it was held that a disbursal made to a third party upon the instructions of the Corporate Debtor tantamounts to a disbursal made to the Corporate Debtor itself. The relevant portion of the said judgement is reproduced below:

> "36. *It further emerges that disbursal of fund is required but the definition does not use the expression that disbursal should be made to the Corporate Debtor only. Hence, it can be implied that any disbursal made on behalf of the Corporate Debtor or at the instructions of the Corporate Debtor may also tantamount to disbursal made to the Corporate Debtor. We note that it was the Corporate Debtor who was beneficiary of such disbursal. In the present case undisputedly, the Corporate Debtor used to procure raw material from vendors for which payments were made by the Respondent No. 1, at the instructions of the Corporate Debtor and therefore it assume the character of financial debt."*

8.21. In the light of the above decision of the Hon'ble NCLAT in matter of Rajeev Kumar Jain(Supra) and considering the facts of the present case , this Tribunal is of the view that the transaction lies within the ambit of Section 5(8) of the code and is a financial debt therein.

8.22. As regard the allegation that the debt amount is disputed, un-adjudicated, and hypothetical figure , we are of the view that Applicant has produced sufficient documents including bank statements and Balance Sheet of the Corporate Debtor, which clearly show that the debt is way above the threshold limit of Rs. 1 crore as per Section 4 of the Code. Further it is the IRP/RP who shall determine the actual amount of claim.

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

> *"8. This Tribunal in the case of Company Appeal (AT) (Ins) No. 323/2019 (Neeraj Jain Vs. Yes Bank Ltd. & Anr.) decided on 10.04.2019 held that Section 7 being an independent proceeding is nothing to do with the pendency of Criminal Case relating to misappropriation of funds. This Tribunal in the case of App. (AT) (Ins) No. 1021/2019 (Karan Goeal Vs. M/s. Pashupati Jewellers & Ors.) decided on 01.10.2019 held that merely because suit has been filed by the Financial Creditor and pending cannot be ground to reject the application under Section 7 of the I&B Code.*
>
> *9. <u>In the light of above pronouncement, we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-obstante clause of the I&B Code will prevail over any other law for the time being in force."</u>*

8.24. In view of the facts and circumstances of the present case and applying the dictum laid down by the Hon'ble NCLAT in Vindhya Cereals Pvt. Ltd. (supra), this Adjudicating Authority is of the considered view that Section 238 of the Code, containing an overriding non-obstante clause, shall prevail over other laws. Consequently, the pendency or initiation of multiple proceedings under the SARFAESI Act, 2002 or before the Cooperative Courts poses no bar to the maintainability of the present proceedings under the Code. The contention of the Corporate Debtor in this regard is therefore rejected.

8.25. The Corporate Debtor has relied upon the Judgment of Hon'ble Supreme Court in the matter of M/s. Vidarbha Industries Power Limited v Axis Bank (2022) 8 SCC 352) which in our view does not apply for the reason as the Hon'ble Supreme Court has time and again in its various judgements including the judgement in the matter of M. Suresh Kumar Reddy Vs. Canara Bank & Ors. CIVIL APPEAL NO. 7121 OF 2022 held that the Judgement of Vidarbha was pronounced keeping in mind the peculiar facts of the case and cannot be held to be held a valid precedent.

8.26. Further this Tribunal has relied on the judgement 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 process by a financial creditor which has been succinctly summed up in Innoventive (supra):</u>

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

adjudicating authority that the adjudicating authority may reject an application and not otherwise."

33. Reiterating the ratio in Innoventive (supra), this Court in ES Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd. [(2021) ibclaw.in 173 SC]32 held as follows: "34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. <u>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.</u> <u>These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5).</u> The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."

34. <u>In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt.</u> 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.

<u>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.</u> The legislative intent behind such prompt and summary intervention is "to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."

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

"61. In our view, the Appellate Authority (NCLAT) erred in holding that the adjudicating authority (NCLT) was only required to see whether there had been a debt and the corporate debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The adjudicating authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of Aptel referred

to above and the overall financial health and viability of the corporate debtor under its existing management.

………………………………………………………………

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

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

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

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

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

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

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

(emphasis wherever required supplied)

8.27. 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.

8.28. 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) 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.

8.29. Financial Creditor has also proposed the name of an Insolvency Professional (IP) i.e. Mr. Mahesh Bagla, having Registration No. IBBI/IPA-002/IP-N-00689/2018-2019/12207 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.

8.30. 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) 1370/MB/2025 filed under Section 7 of IBC, 2016, by Sangli District Central Co-operative Bank Limited ,the Applicant (FC) ,for initiating CIRP in respect of Swapnapurti Sugar 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**,** Mr Mahesh Bagla, having Registration No. IBBI/IPA-002/IP-N-00689/2018-2019/12207 and **e-mail address** maheshgbagla@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 quarterly 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/-	**Sd/-**
NILESH SHARMA	**SAMEER KAKAR**
MEMBER (JUDICIAL)	**MEMBER(TECHNICAL)**

//Sumant//