



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 202**  
**IB-796/ND/2024**

**IN THE MATTER OF:**

**M/s Canara Bank Limited**

Through Authorized Representative  
Mr. K. Sivanadh, Chief Manager  
Branch Office at, LCB Secunderabad,  
TSR Complex, 1-7-1, 2nd Floor,  
SP Road, Secunderabad

**... Applicant/  
Financial Creditor**

**Versus**

**M/s Jalandhar Amritsar Tollways Limited**

Eros Corporate Tower 15th Floor,  
Nehru Place,  
New Delhi, Delhi, – 110019, India

**...Respondent/  
Corporate Debtor**

**Under Section: 7 of IBC, 2016**

**Order delivered on 17.01.2025**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Priyadarshani Dewan, Adv. Shankari Mishra

**For the Respondent** :

**Hearing Through: VC and Physical (Hybrid) Mode**

**ORAL ORDER**

The details of debts and default are given in Part- IV of the application, the relevant excerpt of which reads thus: -



**Part - IV**

<b>PARTICULARS OF FINANCIAL DEBT</b>				
1 <b>TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT</b>	Total amount sanctioned and disbursed by the Financial Creditor to the Corporate Debtor is to the tune of Rs. 139,48,00,000/- (Rupees One Hundred and Thirty Nine Crores Forty Eight Only) (Rupee Facility) as per the two following Account No. Facility being,			
	<b>S. No</b>	<b>Account No. Facility</b>	<b>Date of Loan Papers</b>	
			<b>Sanctioned Limit (Rs.)</b>	
	1	Term Loans, 2657773000 19	10.06.20 06	60,00,00,000 /-
	2	Term Loans 2657773000 86	17.03.20 10	79,50,00,000 /-
	<b>Total</b>		<b>139,48,00,000/-</b>	

[\*\*\*]

2 <b>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</b>	<i>Amount Claimed To Be In Default:</i>		
	<b>Rs 117, 70, 70, 193.68</b> (One Hundred Seventeen Crores, Seventy Lakhs, Seventy Hundred, One Hundred Ninety Three Rupees and Sixty Eight Paise)		
	<i>Date On Which The Default Occurred :</i> 25.08.2021.		
	Computation from period of 18.12.2006 to 27.05.2024 is attached herewith.		
	<b>Particulars</b>	<b>Account no.</b>	<b>Total</b>
		<b>2657773000086</b>	
	Amount Sanctioned (ROI @10.95)	Rs. 60,00,00,00	Rs. 79,48,00,000
			Rs. 13,948,00,000



Total Demand	Rs. 147,6 5,16, 613.9 6	Rs. 171,42,3 5,372.34	Rs. 319,09 ,51,98 6.30
Total Collection	Rs. 90,83 ,32,5 24.76	Rs. 110,53,4 9,267.86	Rs. 201,36 ,81,79 2.62
Total Amount due on as on 27.05.2024	Rs. 56,81 ,84,0 89.28	Rs. 60,88,86, 104.48	<b>Rs. 117,7 0,70,1 93.68</b>

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2. We issued notice to the Corporate Debtor on 03.12.2024 and granted it time to file reply to the application within one week from the date of receipt of the notice. The order dated 03.012.2024 reads thus: -

*“Issue notice to the Respondent returnable on 02.01.2025. The Applicant undertakes to serve notice upon the Respondent through all modes viz. registered post, speed post, courier service and E-mail. Affidavit of service be filed within one week. Reply, if any, may be filed by the Respondent within one week from the date of receipt of the notice. Rejoinder, if any, may be filed before the next date of hearing.*

*List the matter on 02.01.2025.”*

3. As no one appeared on behalf of the Corporate Debtor, despite service of notice, we could pass an order dated 02.01.2025, setting the proceedings qua Corporate Debtor as *ex-parte*. The order dated 02.01.2025 reads thus: -

*“There is no appearance on behalf of the corporate debtor despite service of notice. Though no affidavit/proof of service has been uploaded on DMS. However, the Ld. Counsel appearing for the creditor i.e. The Canara Bank Limited could produce before us the track consignment as also the receipt of speed post. Let affidavit of*



*service be filed within one week from today. As there is no appearance on behalf of the corporate debtor despite service of notice the proceedings qua it is set ex parte. The petitioner/applicant is directed to send a copy of this order to corporate debtor today itself and make an averment to this effect in the affidavit to be filed. List on 17.01.2025.”*

4. Today again, there is no appearance on behalf of the Corporate Debtor. In ***State Bank of India & Ors. vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr.*** [Civil Appeal Nos. 5023-5024 of 2024], the Hon’ble Supreme Court ruled that this Tribunal and Hon’ble NCLAT should adhere to timelines. The para 182 of the judgment reads thus: -

*“182. Moving on to certain efficiency issues within the NCLTs and NCLAT, it has been noticed over a period of time that there is a serious lack of timely admission and disposal of the applications filed as regards the initiation of CIRP, approval of the resolution plan and liquidation. This only adds to the uncertainty of the process and prolongs the dispute thereby jeopardizing the interest of all the stakeholders involved. Adjudication in a time-bound manner would help prevent any further deterioration of the value of the corporate entity. The integrity of the original timelines laid down by the Code and the Resolution Plan must not be allowed to be violated since it would dilute the objective of the Code in its entirety, erode investor confidence and hinder all corporate restructuring efforts.”*

(Emphasis Supplied)

5. As can be seen from the provision of Section 7(4) of IBC, 2016, this Tribunal should within 14 days of the receipt of the application under sub-section (2) of Section 7 of the Code 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).



6. Thus, we cannot defer hearing in the matter indefinitely more so when the Corporate Debtor has not cared to appear before this Tribunal, though the Hon'ble Supreme Court has ruled that before admitting a petition, this Tribunal should follow principle of natural justice and give an opportunity of hearing to the Corporate Debtor.

7. However, we can take benefit of such judgments of Hon'ble Supreme Court only in cases where it is not possible to adhere to timelines and it becomes necessary to adjourn the hearing.

8. In the present case, there is no such situation as the Corporate Debtor is not represented before us and there has never been a request on behalf of the Corporate Debtor for an adjournment.

9. Thus, having due deference the law declared by the Hon'ble Supreme Court in *State Bank of India Vs. Murari Lal Jalan (supra)*, we proceed to take decision in terms of the provisions of Section 7(5) of IBC, 2016. The Section 7(5) of the Code reads thus: -

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

*[...]*

*(5) Where the Adjudicating Authority is satisfied that—*

*(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*



*(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

*Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.”*

**10.** It is seen from Section 7(3) of the Code that the Financial Creditor shall along with application furnish record of default recorded in the information utility or such other record of evidence of default as can be specified. Further, the Applicant is required to give the name of the Resolution Professional proposed to act as an Interim Resolution Professional. The Section 7(3) of the Code reads thus: -

*“(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.”*

**11.** As can be seen from the record, the Creditor bank served recall notice dated 10.08.2021 upon the Corporate Debtor, recalling the financial facility. The recall notice reads thus: -

**Sub: RECALL OF FINANCIAL ASSISTANCES GRANTED TO M/S JALANDHAR AMRITSAR TOLLWAYS LTD (“COMPANY”)**

1. Canara Bank (hereinafter referred to as “CB”), had granted to the Company, at its request, the following facilities:

Rupee Term Loan facility aggregating to Rs 139,50,00,000/- (Rupees One Hundred and Thirty Nine Crores Fifty Lakhs only) (“Rupee Facility”) provided pursuant to the Agreements as per annexure II, for Term Loan I and Term Loan II.



2. For availing the Facilities, the Company executed the Facility Agreement, security documents, and other documents in the nature of contractual comfort from third parties more fully described in Annexure I and acknowledged debt dated 28.12.2013 (master restructuring agreement), 1.06.2016, 19.07.2018, 17.02.2021 and securities from time to time.
3. Pursuant to the Transaction Documents, executed by the Company and other third parties, i.e Corporate Guarantee of M/s IVRCL Ltd had disbursed the amount to the company from time to time under the facilities.
4. In terms of the Transaction Documents, the company has failed to meet its repayment obligations towards us and, committed serious breaches and defaults under the Transaction Documents.
5. The Company has been unable to meet the repayment obligations and consequently, has committed a default under Facilities. The Company's account has been classified as Non-Performing Asset (NPA) with effect from 31.03.2021 as per the norms of RBI.
6. In these circumstances, we hereby recall all outstanding payments including the principal, interest, default interests and other amounts due and payable in relation to the Facilities in entirety and we are constrained to call upon the Company/Guarantors more particularly addressed herein above, to forthwith pay to us within a period of 7 (seven) days from the date of this notice, a sum aggregating to Rs 79,10,82,920.00 (Rupees Seventy Nine Crores Ten Lakhs Lakhs Eighty Two Thousand Nine Hundred Twenty rupees only) outstanding under the Facilities as on 10.08.2021. Further balance due will be payable along with interest @15.20% for term loans. The same is detailed in the Annexure-1.
7. In case the Company fails to pay the amount prescribed above not later than 7 (seven) days hereof, we shall be constrained to initiate suitable action in accordance with law at risk, cost and consequences of the Company / guarantors.
8. We also call upon the Company, and other security and contractual comfort providers not to dispose of any of their assets (Both Tangible and Intangible) or to create any third party interest over the same, and deal in any manner whatsoever nature, which is detrimental to the interest of the bank. Any attempt to dispose off the same or create any third party interest shall be construed as fraudulent transfer(s) meant to defraud and deprive us of the said valuable securities and in the event of any such fraudulent transfer(s), we shall be at liberty to proceed against the Company and other security and contractual comfort providers under the applicable civil and criminal laws.
9. We further reserve our right to inform Reserve Bank of India, Trans Union CIBIL Limits or such other agencies appointed by the Reserve Bank of India and under applicable laws, who are empowered to disseminate credit information about the default committed by you.
10. Notwithstanding anything contained in this notice, please note that we reserve all our rights, remedies and powers, which we may now or subsequently have, in respect of the matters referred to in this notice or any other breach of the Transaction Documents which may have occurred or which may occur in the future. We also reserve our rights in respect of any facts or circumstances which may give rise to a claim against you and/or any other person/entity. This reservation applies to all the rights, remedies and powers which arise now or subsequently, under the Transaction Documents, in law or otherwise. No action or



inaction or delay on our part shall be deemed or implied to be a waiver of any right or power or to preclude, in any manner, the exercise of any of our rights, remedies, powers or privileges under the Transaction Documents or under law. We reserve all of our rights, remedies and powers under or pursuant to the Transaction Documents to give any further direction or to exercise any right, power or interest in respect of the matters referred to in this notice.

11. This notice shall be governed by and construed in accordance with Indian Law.
12. This notice is without prejudice to our rights under the Insolvency and Bankruptcy Code, 2016.
13. All capitalized terms used but not defined herein shall have the meaning given to them under the respective Facilities Agreements.

In the meantime, please acknowledge receipt.

Yours Faithfully,

For CANARA BANK

**12.** Additionally, Ms. Shankari Mishra, Ld. Counsel appearing for the Creditor, could draw our attention to the letter dated 25.08.2021 written on behalf of the Corporate Debtor to the Creditor, admitting the liability to repay the amount of debt. The letter reads thus: -

Ref: JATL / HO/JATL-CB/2021-21/ 650

Date : 25-08-2021

To

Branch-In-Charge,  
Canara Bank,  
Prime Commercial Branch,  
Secunderabad.

Dear Sir,

**Sub: Recall of Financial Assistances granted to us**

Ref: Your Lr. No. LCBSEC : CR-44/715/MB/2021 Dated 10-08-2021

This is with reference to the above mentioned recall notice for payment of entire dues by us sanctioned to us for execution of the Jalandhar to Amritsar Road Project.

In this regard we would like to bring out the following issues to your attention:

You are aware that development of the project highway was based on Build, operate and transfer basis wherein toll collections is the only source of fund during the Operation stage which is available with the Concessionaire to meet all the expenses as per the Waterfall mechanism in Concession agreement and the financing documents. While we have been following the Waterfall mechanism and performing our obligations, however, as the Toll revenues were not getting generated as anticipated, the Company was unable to meet the contractual obligations.



The various reasons affecting the Toll revenues, leading to the current situation, which are beyond the control of the Concessionaire are as follows:

The Toll revenues are based on various assumptions and data collected during the site surveys conducted by the Concessionaire, The Economic forecast by the State and Central Governments, the Industrial growth potential of the area, and in this case the trade with the Pakistan along with the details provided by NHA in their DPR ,etc..

However, the toll collections in Jalandar Amritsar Tollways Limited never reached the forecast of the revenues done neither by the Concessionaire during Financial closure nor that of NHA DPR. The Comparative statement is as follows:

REVENUE ( TOLL PLAZA 1 & TOLL PLAZA 2)				( All values In Rs. Lacs)						
Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
AS PER DPR	3,141	3,396	3,673	3,976	4,306	4,642	5,006	5,402	5,647	5,904
AS PER APPROVED FINANCE MODEL	3,010	3,353	3,742	4,021	4,350	4,818	5,451	5,999	6,477	7,048
AS PER RESTRUCTURED LOAN	-	-	-		3,349	3,815	4,259	4,692	5,193	5,762
Actual toll collection	2,059	2,621	2,993	3,170	3,491	3,691	3,781	4,145	4,057	
% Shortfall w.r.t DPR	-34%	-23%	-19%	-20%	-19%	-20%	-24%	-23%	-28%	
% Shortfall w.r.t Original FM	-32%	-22%	-20%	-21%	-20%	-23%	-31%	-31%	-37%	
% Shortfall w.r.t Restructured Loan					4%	-3%	-11%	-12%	-22%	

#### Cummulative Shortfall till Mar 2019

W.r.t DPR Rs 9,181 Lakhs

W.r.t Original FM Rs 11,214 Lakhs

The Major reasons for this shortfall in revenue are as follows:

- 1) JATL had achieved the Provisional COD on 29<sup>th</sup> April 2010 and the Extension of Time for the delayed period of 515 days attributable to NHA was approved for the Construction period. However, we were denied the Extension of Concession period. We had lost the opportunity to collect toll during this period.

NHA had bought a policy circular (Technical 195/2016 dated 19-01-16) to compensate Concessionaires by way of Extension of Concession Period and this project also is best suited for the Policy to be implemented , however this did not happen.

- 2) Location of Toll Plaza's

The Location of the Toll plaza plays a very important role in arresting the traffic leakage. As per the CA the locations of Toll plazas was to be finalised with the IC and accordingly, it was finalised to Construct one of the Toll plaza at km 447 which was an ideal location to tap the traffic . However, the same was abruptly shifted during the construction of the Plaza to km 442. This resulted in the Loss of revenue.

- 3) Slip roads :

- a. To add to the wound Taran Taran Bypass was constructed at Km 445 from where the traffic which was supposed to cross toll plaza could easily take a diversion and not pay the toll even after using the toll road for 15 Kms. Our requests for establishing a check plaza were denied.



b. During 2017, Radha Swami Dera developed parallel facility and connected to project highway bypassing the Toll plaza @ km 410+210.

4) Trade With Pakistan:

It is known that the trade between India and Pakistan is banned leading to the decreased movement of MAV and Trucks. This has resulted in the reduction in toll revenue.

5) General Economic Slowdown : The economic growth rate is not as anticipated during 2005-06 based on which the estimation of revenue was forecasted.

The above factors are the main reasons for the revenue shortfall and no Concessionaire can anticipate such a scenario. We have been trying to maintain the road in traffic worthy condition since the last decade and utilizing the funds collected in a prudent way.

We could not take up the Major maintenance works due to the revenue shortfall and NHAI had suspended the Toll collection and later on Terminated the contract inspite of the Concessionaire opening a Sub – escrow account and depositing initial Rs. 30 crs in it, as agreed during the meeting held on 17-05-19 between NHAI and yourselves for executing the Periodic Maintenance works .

We have reserved our right to challenge this arbitrary action by NHAI and have sought the Lenders support to initiate dispute resolution process (DRP) against NHAI, for which reply is awaited from your side. Once the DRP is initiated and verdict is received, we are of the opinion that NHAI will have to withdraw their termination notice and revert the toll collection rights to us.

Considering the above facts we request you to kindly permit us to initiate the DRP against NHAI and withdraw the recall Notice issued till the DRP is completed.

Thanking You,

For Jalandhar Amritsar Tollways Limited

( Authorised Signatory)

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**13.** The aforementioned letter is CD's response to the recall notice. The recall notice and the CD's response are sufficient evidence to arrive at a conclusion that the Corporate Debtor has committed default in repayment of the amount of debt.

**14.** In view of the aforementioned, we are left with no option but to admit the petition. **In the wake, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof, the following prohibitions are imposed, which must be followed by all and sundry:



- a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) Transferring, encumbering, alienating or disposing of by the Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.

**15.** As proposed by the Petitioner, Mr. Sanjay Kumar Mishra, having Registration No. IBBI/IPA-001/IP-P01047/2017-18/11730 (Email: sanjaymishra313@gmail.com) is appointed as IRP. In the Form 2, enclosed as Annexure A21 of the application, Mr. Sanjay Kumar Mishra has given a declaration that there are no disciplinary proceedings pending against him and that he is eligible to be appointed as resolution professional. Relevant excerpt of the same reads thus: -

*“(iv) certify that there are no disciplinary proceedings pending against me with the Board or Insolvency Professionals of ICAI;*

*(v) affirm that I am eligible to be appointed as a resolution professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;”*



**16.** It is further ordered that Mr. Sanjay Kumar Mishra, having Registration No. IBBI/IPA-001/IP-P01047/2017-18/11730, shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extant provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

**17.** The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

**18.** A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

**19.** In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

**Sd/-**  
**(SUBRATA KUMAR DASH)**  
**MEMBER (T)**

**Sd/-**  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**

*Iqraa Wasi/Atul Raj*