NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. C.P. (IB)/1058(MB)2022

IN THE MATTER OF

Srei Equipment Finance Limited … Petitioner

Vs

R S Kamthe Infrastructure Developers private Limited … Respondent

U/s 7 of the Insolvency & Bankruptcy Code, 2016

Order Delivered on 14.10.2026

CORAM:

MS. LAKSHMI GURUNG
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: Adv. Rohan Agrawal a/w Adv. Harshad Vyas and Adv. Pawan Kulkarni i/b AVP Partners (VC)

For the Respondent:

ORDER

C.P. (IB)/1058(MB)2022- The above C.P. (IB)/1058(MB)2022 is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
CHARANJEET SINGH GULATI
Member(Technical)

Sd/-
LAKSHMI GURUNG
Member(Judicial)

/Ziyaul/

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT V

CP(IB)/1058(MB)2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

SREI Equipment Financial Limited

Having its Office at:

Vishwakarma, 86C, Topsia Road (South), Kolkata – 700 046.

... Financial Creditor/Petitioner

Versus

R. S. Kamthe Infrastructure Developers Private Limited

Having its address at:

208, Ganraj Market, 2nd Floor, Opp. Union Bank of India, Gate No. 2, Gultekadi Market Yard, Pune, Maharashtra – 411 037.

... Corporate Debtor/Respondent

Order Pronounced on: 14.10.2026

Coram:

Sh. Charanjeet Singh Gulati
Member (Technical)

Smt. Lakshmi Gurung
Member (Judicial)

Appearances:

For the Petitioner: Adv. Rohan Agrawal a/w Adv. Ativ Patel, Adv. Harshad R. Vyas, Adv. Pavan Kulkarni i/b AVP Partners (PH)

For the Respondent: Adv. Rohit Gupta i/b Aditya Dubey (VC)

ORDER

1. The Present Company Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**'IBC'/ 'the Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by SREI Equipment Financial Limited (**'the Financial Creditor/Petitioner'**) for initiating Corporate Insolvency Resolution Process (**'CIRP'**) against R S Kamthe Infrastructure Developers Private Limited (**'the Corporate Debtor/Respondent'**) for a default amount of **Rs. 7,28,54,918/-** (Rupees Seven Crore Twenty-Eight Lakh Fifty-Four Thousand Nine Hundred Eighteen Only) as on 12.08.2022.

2. It is important to note that the present Petition was dismissed by order dated 02.11.2023 on the ground that it was barred under Section 10A of the Code. The Petitioner challenged the order dated 02.11.2023 by filing an appeal, being *CA (AT) (Ins) No. 116 of 2024*, before the Hon'ble NCLAT. Vide order dated 28.01.2026, the Hon'ble NCLAT set aside the dismissal order dated 02.11.2023 holding that application is not barred by Section 10A, and revived the present Petition for afresh consideration by this Authority. Accordingly, the Petitioner filed *Restoration Application No. 17 of 2026,* seeking restoration of the Company Petition. Thereafter, vide order dated 20.02.2026, this Tribunal restored the Company Petition.

Brief Facts as per the Petition:

3. It is submitted that the Petitioner and the Respondent executed two Master Facility Agreements (**'MFAs'**). As per Schedule VII of the First Loan Agreement No. 178737 dated 01.07.2019, the total loan facility amounting to Rs. 2,95,00,000/- was sanctioned, which was to be repaid in monthly instalments starting from September 2019 to May 2022. Further, as per the Statement of account for the Loan Agreement No. 178737 as on 12.08.2022, the particulars of the loan were as follows:

Calculation Date	12-08-2022		
Contract No	178737	ODC Rate	36.50%
Party Name	RS Kamthe Infrastructures Developers Pvt Ltd		

Sl No	Transaction Date	Disbursed Amount (Rs.)	Instalment Due Amount (Rs.)	Instalment Collection Amount (Rs.)	Overdue Charges Collection Amount (Rs.)	Overdue Charges (Rs.)
1	01-07-2019	2,95,00,000	-	-	-	-
2	18-07-2019	-	-	25,000	-	-
3	15-09-2019	-	2,99,000	-	-	-
4	15-10-2019	-	2,99,000	-	-	8,218
5	15-11-2019	-	11,43,000	-	-	18,023
6	15-12-2019	-	11,43,000	-	-	52,256
7	27-12-2019	-	-	19,41,000	-	34,931
8	07-01-2020	-	-	9,43,000	-	11,237
9	15-01-2020	-	11,43,000	-	-	789
10	05-02-2020	-	-	11,43,000	-	25,991
11	15-02-2020	-	11,43,000	-	-	1,252
12	13-03-2020	-	-	11,43,000	-	34,251
13	16-06-2020	-	-	-	74,795	15,888
14	03-07-2020	-	-	10,03,384	-	1,740
15	03-07-2020	-	-	-	1,38,508	-
16	21-08-2020	-	-	11,42,860	-	-
17	21-08-2020	-	-	-	-	-
18	15-09-2020	-	11,43,000	-	-	-
19	28-09-2020	-	-	25,15,140	-	-
20	28-09-2020	-	-	9,14,000	-	-
21	28-09-2020	-	-	-	-	-
22	15-10-2020	-	11,43,000	-	-	-
23	15-11-2020	-	11,43,000	-	-	-
24	15-12-2020	-	11,43,000	-	-	-
26	15-01-2021	-	11,43,000	-	-	-
27	15-02-2021	-	11,43,000	-	-	3,283
28	15-03-2021	-	11,43,000	-	-	35,019
29	15-04-2021	-	11,43,000	-	-	75,358
30	15-05-2021	-	11,43,000	-	-	1,09,434
31	15-06-2021	-	11,43,000	-	-	1,51,974
32	15-07-2021	-	11,43,000	-	-	1,85,840
33	15-08-2021	-	11,43,000	-	-	2,33,336

Sl No	Transaction Date	Disbursed Amount (Rs.)	Instalment Due Amount (Rs.)	Instalment Collection Amount (Rs.)	Overdue Charges Collection Amount (Rs.)	Overdue Charges (Rs.)
34	15-09-2021	-	11,43,000	-	-	2,76,015
35	15-10-2021	-	11,43,000	-	-	3,09,541
36	15-11-2021	-	11,43,000	-	-	3,65,059
37	15-12-2021	-	11,43,000	-	-	3,98,340
38	15-01-2022	-	11,43,000	-	-	4,59,617
39	15-02-2022	-	11,43,000	-	-	5,09,313
40	15-03-2022	-	11,43,000	-	-	5,05,551
41	15-04-2022	-	11,43,000	-	-	6,11,669
42	15-05-2022	-	11,43,000	-	-	6,44,274
43	15-06-2022	-	11,43,000	-	-	7,21,501
44	15-07-2022	-	11,43,000	-	-	7,53,805
45	12-08-2022	-	-	-	-	7,55,902
	Total	**2,95,00,000**	**3,14,59,000**	**1,07,70,384**	**2,13,303**	**73,09,409**

Particulars	Amount
Instalment Overdue Amount (Rs)	2,06,88,616
Principal Outstanding (Rs)	74,39,564
Overdue Charges (Rs)	70,96,106
Other Amount (Rs)	-
Total (Rs)	**3,52,24,286**

4. As per Schedule VII of the Second Loan Agreement No. 180822 dated 28.09.2019, the total loan facility amounting to Rs. 2,74,50,000/- was sanctioned, which was to be repaid in monthly instalments starting from December 2019 to August 2023. Further, as per the Statement of account for the Loan Agreement No. 180822 as on 12.08.2022, the particulars of the loan are as follows:

Calculation Date	12-08-2022		
Contract No	180822	ODC Rate	36.50%
Party Name	RS Kamthe Infrastructures Developers Pvt Ltd		

Sl No.	Transaction Date	Disbursed Amount (Rs.)	Instalment Due Amount (Rs.)	Instalment Collection Amount (Rs.)	Overdue Charges Collection Amount (Rs.)	Overdue Charges (Rs.)
1	28-09-2019	2,74,50,000	-	-	-	-
2	15-12-2019	-	2,00,000	-	-	-
3	07-01-2020	-	-	2,00,000	-	4,583
4	15-01-2020	-	2,00,000	-	-	36
5	16-01-2020	-	-	2,00,000	-	202
6	15-02-2020	-	2,00,000	-	-	145
7	13-03-2020	-	-	1,99,070	931	5,525
8	20-03-2020	-	-	2,00,000	-	73
9	16-06-2020	-	-	38,327	12,084	-
10	03-07-2020	-	-	8,35,592	-	-
11	03-07-2020	-	-	-	-	-
12	21-08-2020	-	-	140	-	-
13	21-08-2020	-	-	8,36,700	-	-
14	21-08-2020	-	-	-	-	-
15	15-09-2020	-	2,00,000	-	-	-
16	28-09-2020	-	-	7,58,852	-	-
17	28-09-2020	-	-	548	-	-
18	28-09-2020	-	-	9,13,860	-	-
19	28-09-2020	-	-	-	-	-
20	28-09-2020	-	-	-	-	-
21	15-10-2020	-	8,36,700	-	-	-
22	15-11-2020	-	8,36,700	-	-	-
23	15-12-2020	-	8,36,700	-	-	-
26	15-01-2021	-	8,36,700	-	-	-
27	15-02-2021	-	8,36,700	-	-	-
28	15-03-2021	-	8,36,700	-	-	22,316
29	15-04-2021	-	8,36,700	-	-	51,381
30	15-05-2021	-	8,36,700	-	-	76,336
31	15-06-2021	-	8,36,700	-	-	1,07,232
32	15-07-2021	-	8,36,700	-	-	1,32,034
33	15-08-2021	-	8,36,700	-	-	1,66,542
34	15-09-2021	-	8,36,700	-	-	1,97,651

Sl No.	Transaction Date	Disbursed Amount (Rs.)	Instalment Due Amount (Rs.)	Instalment Collection Amount (Rs.)	Overdue Charges Collection Amount (Rs.)	Overdue Charges (Rs.)
35	15-10-2021	-	8,36,700	-	-	2,22,205
36	15-11-2021	-	8,36,700	-	-	2,62,561
37	15-12-2021	-	8,36,700	-	-	2,86,936
38	15-01-2022	-	8,36,700	-	-	3,31,490
39	15-02-2022	-	8,36,700	-	-	3,67,715
40	15-03-2022	-	8,36,700	-	-	3,65,320
41	15-04-2022	-	8,36,700	-	-	4,42,336
42	15-05-2022	-	8,36,700	-	-	4,66,218
43	15-06-2022	-	8,36,700	-	-	5,22,400
44	15-07-2022	-	8,36,700	-	-	5,46,062
45	12-08-2022	-	-	-	-	5,47,825
	Total	**2,74,50,000**	**1,92,07,400**	**41,83,088**	**13,015**	**51,25,122**

Particulars	Amount
Instalment Overdue Amount (Rs)	1,50,24,312
Principal Outstanding (Rs)	1,74,94,212
Overdue Charges (Rs)	51,12,108
Other Amount (Rs)	-
Total (Rs)	**3,76,30,632**

5. The Petitioner vide Demand Notice dated 24.12.2021, called upon the Respondent to pay the outstanding amount of Rs. 4,27,93,603/- due and payable as on 30.11.2021, within 7 days. Thereafter, upon the Respondent's default, the Petitioner filed the present petition under Section 7 of the Code on 28.09.2022, seeking initiation of the Corporate Insolvency Resolution Process against the Respondent.

Reply of the Respondent:

I. Objection Regarding Loan Account 178737

6. It is submitted that the loan agreement dated 01.07.2019 is incomplete and lacks details of the borrower and guarantor as well as lacks the consent letter to be obtained from the borrower/guarantor for disclosure of information to CIBIL. It is submitted that this loan was sanctioned to the Respondent for the purchase of equipment owned and operated by M/s. Rithwik Projects Private Limited ('**RPPL**').

7. It is submitted that the sanctioned amount of Rs. 2,95,00,000/- was received by the Respondent in its Bank Account on 10.07.2019 and thereafter Respondent returned the amount back to the Petitioner vide Demand Draft dated 11.07.2019, and instead directly purchased the said equipment from M/s RPPL. It is contended that return of the sanctioned amount by the Petitioner has not taken into consideration and adjusted by the Petitioner in the statement of account. Further, the transfer of the machine to the Respondent never took place and was invoiced at a belated stage.

II. Objection regarding loan account No. 180822

8. It is submitted that under the loan agreement dated 28.09.2019, the amount of Rs. 2,74,50,000/- was sanctioned for purchasing equipment owned by the Petitioner itself. It is submitted that the Petitioner has neither disbursed the sanctioned amount to the Respondent in its account for the period from 28.09.2019 to 15.12.2022, nor entered into a specific agreement for sale/purchase of the equipment owned by the Petitioner. Therefore, it is submitted that there is no default on the part of the Respondent, and the money cannot be considered to be disbursed till the time the underlying asset is transferred.

9. It is further submitted that as per Clause 2.1 titled 'facility' of the loan agreement, the agreement was to come into effect after the request made by the Respondent in Schedule VII and upon the Petitioner signing the Schedule VII. It is submitted that the Petitioner has not signed the Schedule VII and therefore no agreement can be said to have come into effect and therefore no financial debt exists.

10. It is submitted that the Petitioner has issued invoices dated 16.08.2021, much after signing of the loan agreement dated 28.09.2019. It is submitted that the date of default as claimed by the Applicant, i.e. 15.04.2021, is much prior to issuance of the invoices dated 16.08.2021. It is submitted that the invoices have only been issued in respect of 8 out of 9 assets as were required to be transferred by the Petitioner to the Respondent, thereby indicating that the Petitioner itself is in default as it not only failed to disburse the amount but also failed to transfer all the assets to the Respondent, hence, there is no default on the part of the Respondent.

11. It is submitted that the Petitioner classified the loan accounts as Non-Performing Assets before December 2021, the date of default in the Petition is wrong. It is submitted that the Petitioner, vide letter dated 03.05.2021, stated that the Respondent has paid the instalments and the negative record created by the Petitioner on the CIBIL record of the Respondent would be resolved as the same was a technical glitch.

12. It is submitted that the CIBIL Report of the Respondent reflects a strong credit history, with a credit line of approximately Rs. 75 Crores, which has been duly repaid by the Respondent. It is further submitted that the Respondent's business is viable and that it has a workforce of approximately 600 workmen/employees. The Respondent has assets valued at approximately Rs. 57 Crores and is currently undertaking three government infrastructure projects, along with several other projects. The Respondent has relied upon the judgment of the Hon'ble Supreme Court in **Vidarbha Industries v. Axis Bank, Civil Appeal No. 4622 of 2021**, to contend that, apart from the existence of debt and default, this Tribunal is also required to

consider whether it is expedient to initiate CIRP against the Respondent, having regard to the relevant facts and circumstances of the case.

13. In view of the aforesaid submissions, it is submitted that the present Petition be dismissed with costs.

Rejoinder of the Petitioner:

14. It is submitted that there was no transaction between the Petitioner and RPPL. The Respondent had approached the Petitioner for a loan to facilitate the purchase of machinery from RPPL. Accordingly, the transaction under the MFAs was solely between the Petitioner and the Respondent, and RPPL was not a party to the said transaction.

15. Further, contrary to the contention of the Respondent, the Petitioner submits that the Respondent has been in possession and use of the said assets since the execution of the MFAs. It is submitted that the amount due under the MFAs squarely falls within the definition of "financial debt" under Section 5(8) of the Code. It is further submitted that the interest charged is in accordance with the terms agreed under the MFAs.

16. It is submitted that the amounts under the MFAs were disbursed for the specific purpose of financing the purchase of machinery by the Respondent from RPPL. The transaction was structured in such a manner that the funds were directly disbursed to RPPL towards adjustment of the amounts payable by the Respondent for the machinery financed under the MFAs. The sale transaction between the Respondent and RPPL was completed upon such adjustment of the amounts due and the Respondent taking possession of the machinery from RPPL. Further, the email dated 30.08.2019 sent by RPPL to the Petitioner, as well as the Petitioner's email dated 21.10.2021 addressed to the Respondent, establish that the Respondent had taken delivery of the machinery and that the Petitioner had only facilitated and financed the purchase. Further, vide its email dated 27.12.2019, RPPL informed the Petitioner that the assets had been taken over by the Respondent.

17. With regard to the contention that the Agreements are incomplete, it is submitted that the Agreements have been annexed in their entirety and contain all the essential terms and information agreed upon between the parties.

18. With regard to the Respondent's contention that the sanctioned amount of Rs. 2,95,00,000/- was returned back to the Petitioner vide Demand Draft dated 11.07.2019, the Petitioner submitted that, under Clause 2.9 of the MFAs, the Respondent could prepay the entire loan amount only after obtaining the prior approval of the Petitioner and upon payment of a premium of four percent, along with any pending taxes, surcharges, cess, etc. Therefore, the Respondent's claim that the facility was repaid by way of a demand draft is contrary to the terms of the MFAs and cannot be considered a valid prepayment.

19. With regard to the loan account bearing No. 180822, it is submitted that the underlying transaction involved the purchase of certain equipment by the Respondent from the Petitioner on a finance basis. Accordingly, the Respondent was required to make payments to the Petitioner from the amounts disbursed by the Petitioner. The equipment was handed over to the Respondent by RPPL between August 2019 and December 2019. The invoices were raised only in August 2021, solely at the request of the Respondent.

20. It is submitted that, while considering ***Review Petition (Civil) No. 1043 of 2022*** against the order dated 12.07.2022 passed by the Hon'ble Supreme Court of India in ***Vidarbha Industries Vs. Axis Bank***, the Hon'ble Supreme Court clarified that the said order was made in the context of the facts of that particular case and should not be interpreted as laying down a general rule or as a statute.

Additional Affidavit by the Petitioner

21. During the course of the hearing dated 25.06.2026, this Tribunal directed the Petitioner to place Form D on record by way of an Additional Affidavit. In compliance with the said order, the Petitioner has, by way of the Additional Affidavit, placed on record Form D generated on 14.12.2023, in respect of

both the Loan Agreements, namely, Contract No. 178737 and Contract No. 180822.

Analysis & Findings

22. Heard Ld. Counsel for the parties, and perused the record. We have given our thoughtful consideration to the arguments advanced and material placed on record.

23. The Petitioner has filed the present Petition on the basis of default committed by the Respondent on 15.04.2021. The Petitioner claims a total outstanding default of Rs. 7,28,54,918/- as on 12.08.2022, contends the equipment was duly delivered to and used by the Respondent, and seeks initiation of CIRP on the ground that debt and default are established.

24. Per contra, the Respondent contends that, having regard to its financial position, the present case is not fit for initiation of CIRP. The Respondent further contends that, in respect of Loan No. 178737, the sanctioned amount was returned by way of a demand draft and the purchase of the equipment was independently made from RPPL, accordingly, no debt remains outstanding. In respect of Loan No. 180822, the Respondent contends that the amount was never disbursed and that Schedule VII was not signed by the Petitioner, and therefore, the Agreement never came into effect.

25. It is an admitted position that under Loan Agreement No. 178737 dated 01.07.2019, a sum of Rs. 2,95,00,000/- was received in Respondent's bank account on 10.07.2019. The Respondent has contended that it returned the loan amount to the Petitioner on the next day by Demand Draft dated 11.07.2019, however, no document or bank statement evidencing a corresponding debit from the Respondent’s account has been placed on record. On the contrary, the Petitioner has placed on record the Statement of Account of the Respondent, showing that the Respondent has been paying instalments upto 21.08.2020, as per the sanctioned loan agreement, which has not been rebutted by the Respondent. Therefore, in the absence of any documentary evidence, the Respondent’s contention of repayment cannot be

accepted, particularly in view of its conduct of continuing to make instalment payments thereafter.

26. Insofar as Loan Agreement No. 180822 is concerned, the Respondent contends that it neither signed Schedule VII of the Agreement nor received any disbursement. However, Schedule VII, placed at page 101 of the Petition, bears the stamp and signature of the Respondent. Under the said Agreement, the Petitioner was to provide funding on behalf of the Respondent. Further, the email dated 30.08.2019 sent by RPPL to the Petitioner records the list of machinery supplied to the Respondent on a purchase basis, which was acknowledged by the Respondent. Thereafter, at the Respondent's request, the Petitioner issued invoices dated 16.08.2021, nearly two years after the assets had been delivered by RPPL. The delivery of the assets and the said correspondence have not been disputed by the Respondent. The Statement of Account also reflects part-payments made by the Respondent up to 28.09.2020. In these circumstances, the contention that there was no disbursement under Loan Agreement No. 180822 cannot be accepted.

27. The Respondent has relied upon the Petitioner's letter dated 03.05.2021, to contend that the instalments had been paid and that the negative CIBIL record was due to a technical glitch. However, the said letter, issued after the recorded date of default, in our view, merely relates to correction of the credit record and does not amount to an acknowledgment that the underlying debt or default stood extinguished.

28. The Petitioner has mentioned the default amounts which occurred after expiry of the Section 10A period, i.e., from 24.03.2021 until filing of the present Petition on 28.03.2022, amounting to Rs. 1,82,88,000/- and Rs. 1,33,87,200/-, respectively. Moreover, the Hon'ble NCLAT in its order dated 28.01.2026 observed that:

> *"8. … The financial creditor has relied on date of default 15.04.2021 which is subsequent to Section 10A period and default by the corporate debtor has been claimed from 15.04.2021 thereafter and the amount which is in default after 15.04.2021 is much beyond the threshold period."*

The aforesaid facts have not been rebutted by the Respondent.

29. At this juncture, it would be apposite to refer to Sections 7(3) and 7(4) of the Code, which are reproduced below:

> *"7. Initiation of corporate insolvency resolution process by financial creditor.*
>
> *(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)."*
>
> *[**Bold for Emphasis**]*

30. In the present case, the Financial Creditor has relied upon the statements of account furnished along with the Application, wherein the default amounts mentioned in Part IV of the Application correspond with the amounts reflected in the said statements. Further, pursuant to the order dated 25.06.2026 passed by this Tribunal, the Financial Creditor has placed on record Form D, i.e., the record of default issued by NeSL, in respect of both Loan Agreements. The Form D records the date of default as 15.04.2021 and was deemed authenticated as on 10.10.2022, with the default amount being Rs. 2,06,88,616/- under Loan Agreement No. 178737 and Rs. 1,50,24,312/- under Loan Agreement No. 180822. Thus, the record of default issued by NeSL corroborates the default amounts and the date of default stated in the Application.

31. Section 7(4) mandates the Adjudicating Authority to ascertain the existence of default from the records of the Information Utility, which, in the present case, is evidenced by the Form D issued by NeSL, along with the other evidence furnished by the Financial Creditor. Taking into account the

aforesaid material on record, we are of the considered view that the Financial Creditor has established the debt and default in respect of the amounts claimed in the Application.

32. The Respondent has further relied upon the judgment of the Hon'ble Supreme Court in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd., Civil Appeal No. 4622 of 2021***, to contend that this Tribunal, apart from being satisfied as to the existence of debt and default, is also required to examine the commercial viability of the Respondent, its ongoing projects, workforce, and asset base, before admitting a petition under Section 7 of the Code.

33. This contention no longer survives in view of the subsequent pronouncements of the Hon'ble Supreme Court. While considering the Review Petition arising from Vidarbha, the Hon'ble Supreme Court itself clarified that the observations therein were made in the context of the facts of that particular case and are not to be read as laying down a general rule of law of universal application. This clarification has been reaffirmed in ***M. Suresh Kumar Reddy v. Canara Bank & Ors., (2023) 8 SCC 387***, wherein the Hon'ble Supreme Court observed as under:

> *"12. A Review Petition was filed by the Axis Bank Limited seeking a review of the decision of **Vidarbha Industries** on the ground that the attention of the Court was not invited to the case of **E.S. Krishnamurthy**. While disposing of Review Petition by Order dated 22nd September 2022, this Court held thus:*
>
> > *The elucidation in paragraph 90 and other paragraphs 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.*
> >
> > *To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes.*

13. Thus, it was clarified by the order in review that the decision in the case of ***Vidarbha Industries*** *was in the setting of facts of the case before this Court. Hence, the decision in the case of* ***Vidarbha Industries*** *cannot be read and understood as taking a view which is contrary to the view taken in the cases of* ***Innoventive Industries*** *and* ***E.S. Krishnamurthy.*** *The view taken in the case of* ***Innoventive Industries*** *still holds good"*

34. Furthermore, it is relevant to take note of the judgment dated 18.02.2026, passed by the Hon'ble Supreme Court in ***Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors., Civil Appeal No(s). 2211/2024***, wherein, while distinguishing between the insolvency processes under Sections 7 and 9 of the Code, the Hon'ble Supreme Court held as under:

> *"35. …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:*
>
> > *"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"

…"

35. From the aforesaid, it is evident that the scope of enquiry before the Adjudicating Authority under Section 7 is confined to ascertaining the existence of a financial debt and whether a default has occurred, once these ingredients stand established, the Adjudicating Authority at the stage of admission, cannot delve into a broader enquiry into the viability, business prospects, or ability of the corporate debtor to pay.

36. In view of the foregoing discussion and the judgments of the Hon'ble Supreme Court, it stands established that financial debt exists under Loan Agreement Nos. 178737 and 180822 and that the Respondent committed default in repayment thereof on and after 15.04.2021. The amount in default exceeds the threshold prescribed under Section 4(1) of the Code, and the Petition is within limitation. The Respondent's reliance on *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.* does not support the Respondent on the ground of commercial viability. Accordingly, the Company Petition is **admitted** in terms of the following order:

ORDER

a. The above **Company Petition (IB) 1058 (MB) 2022 is allowed**, and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **R S Kamthe Infrastructure Developers Private Limited**.

b. Taking into consideration the consent given by the Insolvency Professional, this Bench appoints **Mrs. Megha Agrawal,** having Registration No: **IBBI/IPA-001/IP-P01456/2018-2019/12272**, email: ip.meghaagrawal@gmail.com; Address: 001, Shivranjini Apartments, in Circle of Congress Nagar Garden, Congress Nagar, Nagpur, Maharashtra – 440012, as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of **Rs. 5 Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the

Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby directs operation of moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 and prohibits the following:

   a. the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
   b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
   c. any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
   d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. 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.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub- section (1) of section 31 or passes an order for liquidation of the corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish all information in their knowledge to the IRP/RP.

37. The Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

38. The Registry is hereby directed to communicate this order to both the parties and to the IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

Sd/-
Charanjeet Singh Gulati
Member (Technical)

Sd/-
Lakshmi Gurung
Member (Judicial)

OmkarD.