



NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-1

C.P. (IB)/333/MB/2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **11.09.2025**

NAME OF THE PARTIES: **The Canara Bank Limited**

Vs.

Swaminarayan Diamonds Private 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/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//AS//

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/333/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]*

CANARA BANK LIMITED

[CIN No.: U67190KA1906PLC001069]

Branch Office at:

Stressed Asset Management Branch
C-14, G-Block, Bandra-Kurla Complex
Bandra (E), Mumbai – 400051.

...Financial Creditor

V/s

SWAMINARAYAN DIAMONDS PRIVATE LIMITED

[CIN No.: U36997MH2012PTC237451]

AW2111, Bharat Diamond Bourse
Bandra Kurla Complex,
Bandra East, Mumbai – 400051.

...Corporate Debtor

Pronounced: 11.09.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Yash Dhruva a/w Adv. Ruchita Jain i/b MDP Legal

For Respondent: Adv. Shyam Kapadia i/b T.N. Tripathi a/w TN Tripathi & Co.



ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No.333/MB/2025 (Application) was filed on 16.01.2025 by Canara Bank, the Financial Creditor (FC), having CIN No.: U67190KA1906PLC001069 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 Swaminarayan Diamonds Private Limited, the Corporate Debtor (CD) having CIN No.: U36997MH2012PTC237451.

1.2 As per Part IV of the Application, the amount claimed to be in default as on 30.11.2024 is Rs.49,82,39,199.81/- (Forty-Nine Crore Eighty-Two Lakhs Thirty-Nine Thousand One Hundred Ninety-Nine Rupees and Eighty-One Paise). In Part IV, the date of default is stated to be 10.04.2024 for the GECL facility, 26.04.2024 for the GECL 1.0 facility, and 30.04.2024 for the OCC/ODBD facility. The CD was declared NPA on 05.07.2024.

1.3 The Applicant has proposed Ms. Megha Agrawal, having Registration No. IBBI/IPA-001/IP-P-01456/2018-2019/12272, to act as the Interim Resolution Professional (IRP).

2. CONTENTIONS OF APPLICANT (FC)

2.1 The Applicant initially sanctioned working capital and term loan facilities to the CD between 2013 and 2019, with amounts being enhanced over time.



These facilities were finally consolidated into a total loan amount of Rs.38,00,00,000/- ("2019 Financing"), sanctioned on 18.01.2019, and accepted by the CD's director, Mr. Deepak Nagjibhai Patel (as authorised *vide* the CD's board resolution dated 20.02.2019) on 20.02.2019. The dates of disbursement of the above said credit facilities are as under:

Date	Account	Amount
18.06.2013	0204261103038	38.00 CR.
10.11.2020	0204755000035	5.00 CR.
26.11.2021	170002411800	6.40 CR.
Total		49.40 CR.

2.2 Several documents were signed around this time, including a renewal letter (18.01.2019), debt acknowledgment (07.02.2019), subordination agreement (21.02.2019), and letter of undertaking (20.02.2019). Personal guarantees were also given by four guarantors (Deepak, Sweta, Nagjibhai, and Savitaben Patel) *vide* guarantee agreements dated 21.02.2019, which are continuing guarantees and the liability of the said guarantors is co-extensive with that of the CD.

2.3 To secure this loan, the CD created a first charge (hypothecation) over its stock of goods, and receivables worth Rs. 40 Crores through agreements dated 17.06.2013 and 18.07.2016. Additionally, a simple mortgage over a residential flat in Mumbai was registered on 07.02.2015, by Nagjibhai and Savitaben Patel.

2.4 Later, the same loan (Rs. 38 crore) was renewed on 01.09.2020, and additional documents such as the letter of renewal, debt and security



acknowledgment (now Rs. 40.20 Crores), and letters of undertaking were executed. The personal guarantees from 2019 were reaffirmed.

2.5 Financial Creditor provided further emergency credit under the Guaranteed Emergency Credit Line (“GECL”) scheme, where Rs.5,00,00,000/- was sanctioned on 09.11.2020, with a moratorium of 12 months and repayment over 36 months at 7.5% p.a. interest with a monthly rest to be serviced as and when due. This emergency credit was secured by a hypothecation agreement dated 31.10.2020 and a new simple mortgage over the same Mumbai flat on 02.02.2021.

2.6 Further, a working capital term loan of Rs. 6.4 Crores was sanctioned on 25.11.2021, also for 36 months (with a 24-month moratorium), at the same interest rate to provide liquidity support owing to the Covid-19 pandemic. The CD *vide* its board resolution dated 26.11.2021 authorized Ms. Sweta Patel, to accept the terms and conditions of this GECL Sanction Letter 2 which was secured on the same day *via* additional documents and a supplemental simple mortgage registered on 01.12.2021.

2.7 All these facilities were used for business purposes and secured by a mix of personal guarantees, hypothecated assets, and the mortgaged residential property.

2.8 In March 2023, the CD requested a renewal of the 2019 loan and GECL limits, which the Applicant approved *via* a new sanction letter dated 14.03.2023.

2.9 The CD acknowledged its total debt again on 10.05.2023. Despite repeated reminders, the CD defaulted on repayment obligations. The account was classified as a Non-Performing Asset (NPA) on 05.07.2024. A formal



SARFAESI notice was issued on 06.07.2024, informing the CD of the same and demanding repayment of Rs. 46.42 Crores (as on 05.05.2024). The CD and its Guarantors failed to respond to the said notice and repay their dues owing to which the Applicant u/s 13(4) of the SARFAESI Act, 2002 r/w Rule 8 and 9 of the Security Interest (Enforcement) Rules, 2002 took possession of the mortgaged property by issuing a possession notice on 09.09.2024.

2.10 Details specifying the date of default, default amount, along with the applicable interest, are annexed as Exhibit – 36 in the Application as under:

Particular of Claim of on 30.11.2024 (Applicant No.)

In The Account Of M/s Swaminarayan Diamonds Pvt. Ltd

Name of Facility	Facility/ A/c. No.	NPA Date	Principal O/s. as on 30.11.2024	Rate of Interest _____%p .a.	Total Interest Charged (Rs.)	Final O/s. As on 30.11.2024(Rs.)
OCC/OD BD	0204261103038	05.07.20 24	38,00,00,000.00	13.00%	4,61,74,580.00	42,61,74,580.00
GECL	0204755000035	05.07.20 24	1,07,78,235.10	9.25%	6,44,701.22	1,14,22,936.22
GECL I.0 EXT	170002411800	05.07.20 24	5,68,88,592.59	9.25%	37,53,091.00	6,06,41,683.59
Total			44,76,66,827.69		5,05,72,372.22	49,82,39,199.81

2.11 The Applicant, on 28.05.2025, relying on the Hon'ble Supreme Court's judgement in the matter of ***Dena Bank v. Shivkumar Reddy*** [2021 SCC Online SC 543], sought leave to amend its Form-1 regarding the date of default. The request was granted, and on 03.06.2025, the following amendment was carried out in Form-1:

The date of default, which was previously stated to be 05.04.2024 (NPA date), has now been changed for all three facilities as under:



Name of Facility	Date of Default
OCC/ODBD	30.04.2024
GECL	10.04.2024
GECL 1.0 EXT	26.04.2024

2.12 The Applicant has attached the following documents along with the Application and Rejoinder dated 11.07.2025:

- a) Copy of the master data of the Applicant and the CD.
- b) Copy of the Letter of Authority along with Delegation of Power, authorizing Mr. Gaurav Pareek, authorized representative of the Applicant, to file/sign this Application.
- c) Copy of the Board Resolution of the CD authorizing Mr. Deepak Nagjibhai Patel, in his capacity as a director of the CD.
- d) Copy of the Sanction Letter dated 18.01.2019.
- e) Copy of the Letter of Renewal dated 18.01.2019.
- f) Copy of the Acknowledge of debt and security admitting the Corporate Debtor's liability on 07.02.2019.
- g) Copy of the Subordination Agreement dated 21.02.2019.
- h) Copy of the Letter of undertaking by the CD dated 20.02.2019.
- i) Copy of the Guarantee Agreements dated 21.02.2019 executed by Deepak Nagjibhai Patel, Shweta Deepak Patel, Nagjibhai Kanjibhai Patel, and Savitaben Nagjibhai Patel.
- j) Copy of Common Hypothecation Agreement dated 17.06.2013.
- k) Copy of Supplemental Common Hypothecation Agreement dated 18.06.2016.



- l) Copy of the Simple Mortgage Deed dated 07.02.2015.
- m) Copy of Sanction Letter dated 01.09.2020.
- n) Copy of the Letter of renewal executed by the CD in favour of the Applicant dated 01.09.2020.
- o) Copy of the Acknowledgement of debt and security by the CD dated 01.09.2020.
- p) Copy of the Letter of Undertaking by the CD as well as the Guarantors and Confirmation of 2019 Guarantee Agreements.
- q) Copy of the GECL Sanction Letter 1 dated 09.11.2020.
- r) Copy of the 2020 Supplemental Common Hypothecation Agreement dated 31.1.2020.
- s) Copy of the certificate registered with Registrar of Companies dated 10.12.2020.
- t) Copy of the 2021 Simple Mortgage Deed.
- u) Copy of the CERSAI certificate.
- v) Copy of the GECL Sanction Letter 2 dated 25.11.2021.
- w) Copy of the Board Resolution authorizing Ms. Sweta Deepak Patel, in the capacity as the CD's director to accept the terms and conditions of the GECL Sanction Letter 2.
- x) Copy of the Demand promissory note executed by CD for Rs.6,40,00,000/-.
- y) Copy of the Disbursal request executed by the CD dated 26.11.2021.
- z) Copy of the Letter of undertaking executed by CD.
- aa) Copy of the Take delivery letter executed by CD dated 26.11.2021.



- bb) Copy of the 2021 Supplemental Common Hypothecation Agreement executed by and between the CD and Applicant.
- cc) Copy of the 2021 Supplemental Simple Mortgage Deed in order to further secure the Further Emergency Credit, executed and registered by Nagjibhai K. Patel and Savitaben Nagjibhai Patel.
- dd) Copy of the Renewal Sanction Letter to renew the 2019 Financing facility upon the CD approached the Applicant dated 14.03.2023.
- ee) Copy of the Corporate Debtor's acknowledgement of debt dated 10.05.2023.
- ff) Copy of the acknowledged SARFAESI Notice dated 06.07.2024 issued by Applicant.
- gg) Copy of the NeSL Report.
- hh) Copies of the entries in the Bankers Book/ Statement of accounts along with Banker's Book Evidence certificate.
- ii) Copy of the Written communication of the IRP along with validity certificate.
- jj) NeSL Report for two GECL Term Loan Facilities.
- kk) Statement of Account of the Applicant from 05.04.2024 to 05.07.2024.

3. CONTENTIONS OF CD

- 3.1 An Affidavit-in-Reply dated 21.04.2025 to the original Application was filed by the CD, affirmed by one Mr. Deepak Patel, Director of the CD and its authorized representative, pursuant to Board Resolution dated 01.04.2025.
- 3.2 Owing to granting leave to the Applicant *vide* order dated 28.05.2025, to amend its Form-1, this Tribunal gave liberty to the CD to file its reply to the



amended Form-1. On the next date of hearing, i.e., 18.06.2025, the CD stated that our interim order dated 28.05.2025 has been taken to appeal before the Hon'ble NCLAT, which is yet to be numbered. Hon'ble NCLAT, New Delhi upheld the said interim order of this Tribunal *vide* its order dated 23.06.2025 in CA (AT)(Insolvency) No. 885 of 2025 and recorded the following:

"Keeping in view all the facts and circumstances of the case we are of the considered view that no illegality appears to have been committed by the Adjudicating Authority in giving liberty to the Applicant to submit an amended Form No. 1. More so, when a consequential opportunity has been given to the Appellant to file his reply/response with regard to such amended Form No. 1.

*Thus, for the reasons mentioned above the Appeal in our considered view lacks merit and is hereby **dismissed**. The Adjudicating Authority is requested to move further in order to take a decision under Section 7 of the IBC."*

In reference to the same, the CD sought another opportunity to file its reply to the amended Form-1, the Applicant had no objection to it, and hence, the same was granted.

3.3 The CD filed its reply to the amended Application through an affidavit dated 07.07.2025.

3.4 The CD is a registered Micro, Small and Medium Enterprise (MSME) engaged in the manufacturing and trading of finished, semi-finished,



polished, and semi-polished cultural diamonds, bearing MSME Registration No. UDYAM-MH-19-0010930.

3.5 The CD states that the Applicant had full knowledge of the CD's MSME status, as reflected in its own internal classification of the account as "MSME/OD/OC." The MSME Registration Certificate was duly submitted by the CD to the Applicant's officer, Ms. Jayitasur, on 27.05.2024 in response to the Applicant's requests dated 03.05.2024 and 16.05.2024.

3.6 As a registered MSME, the Respondent is entitled to the statutory protection under the *Framework for Revival and Rehabilitation of MSMEs* notified by the Central Government under Section 9 of the MSME Act and adopted by the Reserve Bank of India *vide* Notification dated 21.07.2016 in its Master Directions. These directions, issued under Sections 29 and 35A of the Banking Regulation Act, are binding on all scheduled commercial banks, including the Applicant. Despite these binding provisions, the Applicant failed to initiate the process mandated under the framework before classifying the Respondent's account as in default on 05.04.2024 or as NPA on 05.07.2024.

3.7 The Hon'ble Supreme Court in ***Pro Knits v. Board of Directors of Canara Bank*** [2024 SCC OnLine SC 1864] has clearly held that:

"What is contemplated in the 'Framework for Revival and Rehabilitation of MSMEs'... is required to be followed prior to the classification of the borrower's account... as Non-Performing Assets. ..., the Banking companies though may be 'secured creditors' as per the definition contained in Section 2 (zd) of the SARFAESI Act, are



bound to follow the same, before classifying the loan account of MSME as NPA.”

3.8 Thus, the classification of the CD's account as NPA without compliance with the statutory framework is unlawful, and the present Application, being founded on such a classification, is not maintainable.

3.9 Furthermore, the Applicant has failed to prove the alleged default. No certified statement of accounts, as required under the Bankers' Books Evidence Act, 1891, has been produced. The alleged certificates relied by the Applicant in respect of accounts from 01.01.2012 to 30.11.2024 and 01.11.2020 and 30.11.2024 and 26.11.2021 to 30.11.2024 in absence of the statement of accounts are irrelevant and inconsequential. The date of default is inconsistently pleaded as 05.04.2024, whereas both the Applicant's own calculation sheet (Ex-36) and the NeSL Certificate (Ex-37) record the date of default as 05.07.2024. This contradiction is fatal. Under Regulation 20(1A) of the IBBI (Information Utility) Regulations, 2017, the Applicant was required to verify and register the correct default date with NeSL prior to initiating CIRP. Having recorded 05.07.2024 as the date of default with NeSL, the Applicant has, by implication, waived any earlier purported defaults.

3.10 Significantly, the Respondent's accounts were well within sanctioned limits on 05.04.2024. On that date, 17 transactions — including 8 withdrawals — were permitted by the Bank, and interest for April 2024 (Rs. 40.62 lakhs) was collected on 30.04.2024. Withdrawals continued until November 2024. If the account was in default, such conduct would not have been possible.



3.11 The Applicant has also simultaneously initiated proceedings under the SARFAESI Act, 2002, issuing a demand notice under Section 13(2) on 06.07.2024 for Rs. 46.42 crores, and took symbolic possession of Flat No. 900 on 09.09.2024. The legality and validity of which is pending for adjudication in S.A. No. 199 of 2024. The secured asset's value exceeds Rs. 54.30 Crores — more than the alleged outstanding dues. Moreover, the Applicant filed Original Application No. 587 of 2024 before the Debts Recovery Tribunal, Mumbai on 06.11.2024 under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993. These parallel proceedings reveal that the present Application is not for resolution, but for debt recovery.

3.12 In ***M/s SS Engineers v. Hindustan Petroleum Corporation Limited***, the Hon'ble Supreme Court observed:

31... The NCLT exercising powers under section 7 or section 9 of the IBC, is not debt collection forum. The IBC tackles and or deals with the Insolvency and Bankruptcy. It is not the object of IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by operational creditor.

3.13 Similarly, the Hon'ble Apex Court in ***Vidarbha Industries Power Limited v. Axis Bank Limited*** held:

“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 of the IBC.”

3.14 Applying this principle, it is submitted that this Tribunal has discretion to reject this Application even if a technical default is established, especially when the purpose behind the Application is not resolution but coercive recovery.

3.15 The original claim arises from facilities allegedly sanctioned in 2012–13, but no contemporaneous documents have been produced. The CD disputes the subsequent supplemental contracts and acknowledgment letters, many of which are inadequately stamped under the Maharashtra Stamp Act and hence inadmissible. No primary documentation supports the alleged disbursements under GECL 1.0 and other facilities, and the claimed amounts are based on unilateral and disputed calculations. The CD categorically denies any outstanding dues of Rs. 49.82 crores, including Rs. 42.61 crores under OCC, Rs. 1.14 crores under GECL, and Rs. 6.06 crores under GECL 1.0, as these are unsupported by legally admissible records.

3.16 The Tribunal’s order dated 10.06.2025 allowed the Applicant to proceed in its existing form. Any subsequent attempt to amend or cure defects in the petition is impermissible. Even after the amendment was allowed on 28.05.2025, the Applicant continues to rely on contradictory documents — Ex-36 [calculation sheet] and Ex-37 [NeSL Certificate] — which record 05.07.2024 as the date of default, contrary to its own pleadings. This inconsistency goes to the root of the matter and renders the Application defective and non-maintainable.



3.17 The CD denies the purported dates of default of 10.04.2024, 26.04.2024, and 30.04.2024 as they are contrary to the NeSL Certificate relied upon by the Applicant. Hence, this Application based on inconsistent dates of default is not tenable and is liable to be rejected.

3.18 In light of the above facts, non-compliance with statutory MSME frameworks, contradictions in the date of default, lack of evidentiary documents, ongoing secured recovery actions, and the clear misuse of IBC as a debt recovery tool, it is respectfully submitted that the present petition is not maintainable and is liable to be dismissed with costs.

4. ADDITIONAL AFFIDAVIT (CD)

4.1 This Tribunal, *vide* order dated 01.05.2025, allowed the CD to file an Additional Affidavit for rectifying an error in CD's Reply dated 21.04.2025. The said Additional Affidavit (dated 09.05.2025), affirmed by its authorized representative, Mr. Deepak Patel, rectified the following:

“Rs.35,00,000/- and Rs.8,80,000/- were stated to be appropriated as interest on 03.04.2024, but are actually debit entries.”

4.2 Interest of Rs.42,07,839.44/- due on 31.03.2024 in Cash Credit A/c No. 0204261103038 was paid on 03.04.2024 *via* RTGS transfers of Rs.10,00,000/-, Rs.31,62,472/-, and Rs.25,00,000/- (part interest). These payments are reflected in the account. Interest and instalments for the other two accounts were also paid up to 31.03.2024.

4.3 The CD therefore submits that no default existed on 05.04.2024, and this Application is liable to be dismissed.



5. REJOINER

5.1 Rejoinder was filed by the Applicant on 23.05.2025, affirmed by one Mr. Gaurav Pareek, who is stated to be its Manager at SAM Branch, Mumbai. An additional Rejoinder was filed by the Applicant on 11.07.2025 in response to the amended Reply by the CD and Additional Affidavit dated 09.05.2025.

5.2 The Applicant has duly followed the established procedure for declaration of NPA, as per the established RBI Guidelines/Norms, including the RBI Master Circular dated 01.07.2011, titled *Master Circular - Income Recognition, Asset Classification, Provisioning and Other Related Matters – UCBs*. As per which, in the case of Overdraft/Cash Credit facilities, an NPA is defined as a loan or advance where, *inter alia*, the account remains “Out of Order” for a period exceeding 90 days. An account is considered to be “Out of Order” if the outstanding balance remains continuously in excess of the sanctioned limit or drawing power. In the present case, the account of the CD did not reflect sufficient credit entries to cover the interest debited during the preceding 90-day period. Accordingly, the account of the CD was classified as NPA on 05.07.2024, due to insufficient credits. The following table shows the interest debited for the 3 months preceding the NPA date:



INTEREST DEBITED (INCLUDING STOCK PENALTY DEBIT)	AMOUNT IN INR
Apr-24	44,31,288
May-24	50,10,283
Jun-24	48,94,244
TOTAL	1,43,35,815
TOTAL DEBIT FROM 05/04/2024 TO 05/07/2024	6,73,56,913
TOTAL CREDIT FROM 05/04/2024 TO 05/07/2024	5,00,21,171

5.3 The Applicant states that the CD has not made any effort to avail the benefits of the MSME Notification. The CD has never followed up with the Applicant or raised any objection before it was declared as an NPA.

5.4 The only dispute raised by the CD is that the date of default mentioned in the amended Company Petition and the NeSL report relied upon by the Applicant are inconsistent, leading to the claim that the Company Petition is not tenable and is liable to be rejected. In response, it is submitted that the NeSL report relied upon by the Applicant in the Company Petition indicates the default as the NPA (Non-Performing Asset) date, which is a valid and acceptable date of default. There is no prohibition against considering the NPA date as the date of default. In fact, the Hon'ble NCLAT, New Delhi, in the case of **Jagdish Prasad Sarada v. Allahabad Bank**, [Company Appeal (AT)(Insolvency) No. 183 of 2020, dated August 28, 2020 [(2021) 15 Comp Case-OL 697: 2020 SCC Online NCLAT 621], clarified that the date of default can indeed be the date when the account is declared as NPA.



5.5 Furthermore, the CD has sought rejection of the Application on the basis of inconsistent dates of defaults, again arguing that the Application is not tenable. In this regard, it is emphasized that the NeSL report is not the sole or conclusive evidence required to prove default. The Hon'ble NCLAT, New Delhi, in the case of **Vijay Kumar Singhania v. Bank of Baroda & Ors.**, [Company Appeal (AT)(Insolvency) No. 1058 of 2023], dated 13.12.2023 (which has been upheld by the Hon'ble Supreme Court), clarified that Section 7(3)(a) of the IBC allows for the record of default to be shown either through IU or through other such records or evidence of default as may be specified. The judgment further clarified that a financial creditor is entitled to furnish certified copies of entries in the relevant account from the bankers' books, as defined under Section 2(a) of the Bankers' Book Evidence Act, 1891, as one of the valid means of proving default. In the present case, the Applicant, in addition to submitting the NeSL report, has also annexed the Statement of Accounts along with the Bankers' Book Certificate to substantiate the default.

5.6 There is no clear denial on the part of the CD as regards the debt and default in respect of the GECL Terms Loan Facilities. Even if we assume that the CD has disputed the debt due and payable in respect of the OCC Facility, the dispute is only with respect to a part of the debt claimed (i.e., in respect of the OCC Facility), even without which, in respect of the GECL Term Loan Facilities, the debt exceeds the threshold of Rs. 1 Crore and falls well within the pecuniary jurisdiction of this Tribunal. Therefore, as established by the aforementioned judgments, the NeSL report is not binding when default can



be independently proven through other documentary evidence placed on record.

5.7 Additionally, the Hon'ble Tribunal, New Delhi, in the case of **Bank of Baroda v. Cygnus Splendid Limited** [Company Petition No. 39 of 2023], clarified that even in the absence of a record of default with an IU, an application filed under Section 7 of the IBC may be admitted, provided the Adjudicating Authority is satisfied that a default has occurred and that the application is complete in all respects.

5.8 NeSL report for the other two GECL Term Loan Facilities has been placed on record showing date of default as 05.07.2024.

6. **WRITTEN SUBMISSIONS (FC)**

6.1 Short synopsis was filed by the Applicant on 08.07.2025.

6.2 The Applicant reiterated that the said facilities have been acknowledged by the CD from time to time, which can be seen from the following exhibits to the Application:

(a) Acknowledgement of Debt and Security dated 07.02.2019 for amount of Rs. 35,12,31,486.81/- (Exhibit 6);

(b) Acknowledgement of Debt and Security dated 01.09.2020 (Exhibit 18);
and,

(c) Acknowledgement of Debt and Security dated 10.05.2023 (Exhibit 34).

6.3 The Applicant states that the CD's default is clearly evidenced by the Statement of Accounts r/w the Certificate issued under the Bankers' Books Evidence Act, as attached to the Rejoinder filed by the Applicant.



- 6.4 The NeSL report reflects the status of default as "Authenticated" and records the date of default as 30.04.2017.
- 6.5 The Applicant contends that this Tribunal does not possess the jurisdiction to adjudicate upon or determine whether the date of NPA was correctly or incorrectly decided by the Bank, or whether the said date was determined in accordance with relevant RBI Circulars or Notifications. The Hon'ble High Court, in the case of ***Samarth Infrabuild (I) Pvt. Ltd., Indore vs. Bank of India & Anr.***, I.L.R. [2016] M.P. 2654, relying on the judgment of the Hon'ble Supreme Court in ***Mardia Chemicals Ltd. vs. Union of India & Ors.***, has held that classification of an account as NPA is not subject to judicial review. Once the Bank authorities have classified an account as NPA, neither this Hon'ble Tribunal nor even the Hon'ble High Court, in exercise of its writ jurisdiction, would have any authority to re-examine or adjudicate upon such classification.
- 6.6 The appropriate remedy available to a party aggrieved by such a declaration is to file a statutory appeal under Section 17 of the SARFAESI Act, 2002, before the Debt Recovery Tribunal (DRT).
- 6.7 The Applicant has duly followed the established procedure for declaration of NPA, in accordance with the applicable RBI Guidelines and Norms, including the RBI Master Circular dated 01.07.2011, which states that in case of Overdraft/Cash Credit facilities, an NPA shall be a loan or advance where, *inter alia*, the account remains "Out of Order" for a period exceeding 90 days. As the account of the CD did not reflect sufficient credit entries to cover the interest debited during the preceding 90-day period, its account was classified as NPA on 05.07.2024.



7. **ANALYSIS AND FINDINGS**

7.1 We have perused the documents as placed before us and heard the Ld. Counsels for the Applicant and the CD.

7.2 The facts relating to the sanctioning of credit facilities by the Applicant to the CD are largely admitted. These were secured by a combination of hypothecation, mortgage over a residential property in Mumbai, and personal guarantees from directors.

7.3 However, the CD has contested the maintainability of the application under several grounds, notably:

- (i) inconsistency in the date of default;
- (ii) lack of compliance with the MSME revival framework prior to NPA classification;
- (iii) insufficiency and inadmissibility of the evidence produced to establish default; and
- (iv) the alleged misuse of the IBC process for recovery, given parallel proceedings under the SARFAESI Act, 2002 and RDB Act, 1993.

The CD also disputes the total amount claimed and contends that no default occurred on 05.04.2024 — the date initially stated in the pleadings.

7.4 The default is continuous, as no record of payment is produced by the CD.

7.5 The CD claims protection under the RBI's Framework for Revival and Rehabilitation of MSMEs, citing the Supreme Court's decision in *Pro Knits v. Canara Bank (supra)*, where it was held that classification of an MSME borrower's account as NPA must follow the revival process under the MSMED Act and RBI guidelines. The CD asserts that the FC violated this



framework by declaring the account NPA without initiating a corrective action plan.

7.6 While the CD's MSME status is not in dispute, the reliefs under the MSMED Act and related RBI frameworks cannot override the operation of the IBC, 2016. The IBC is a self-contained Code for insolvency resolution, and CIRP can be validly initiated against MSMEs once default is established. The date relevant for the purpose of admission of the Application is the date of default and not the date of NPA. Even if procedural non-compliance occurred in declaring NPA, such non-compliance does not negate the right of a financial creditor to approach the Adjudicating Authority under Section 7 of the IBC so long as the financial creditor is able to establish the date of default.

7.7 The question of whether default has occurred is fundamental to the maintainability of a Section 7 application. In the matter at hand, the Applicant has submitted a statement of accounts, certified under the Bankers' Books Evidence Act, alongside a certificate of default from NeSL, which records an "authenticated" default dated 05.07.2024. Acknowledgements of debt dated 07.02.2019, 01.09.2020, and 10.05.2023 further substantiate the Applicant's claim. Under Section 7(3)(a) of the IBC, proof of default can be furnished through a record of default with an IU or other documentary evidence. This was reaffirmed by the Hon'ble NCLAT in **Vijay Kumar Singhania v. Bank of Baroda** [Company Appeal (AT)(Insolvency) No. 1058 of 2023], and the Hon'ble Supreme Court in **Innovative Industries v. ICICI Bank** [(2017) 8 SCR 33] wherein it was held that if debt and default are established, the Adjudicating Authority must admit the petition. In the present case, the CD has not provided any credible



documentary rebuttal to the Applicant's evidence. The Applicant has been able to establish with the help of the Statements of Accounts along with the Certificates under Bankers' Books Evidence Act, 1891, that the defaults have taken place in the CC account, GECL account & GECL-1.0 account on 30.04.2024, 10.04.2024, and 26.04.2024, respectively. The Statement of Account in respect of the OCC facility, as reproduced on page no. 359 of the Application, reflects that the outstanding in the said account exceeded the sanctioned limit of Rs. 38 crores after the interest amounting to Rs.40,62,740/- was charged by the Bank on 30.04.2024. The outstanding in the account post charging of the said interest stood increased to Rs.38,40,62,740/-, which was in excess of the sanctioned limit of Rs. 38 crores. The claim of the CD that the withdrawal in the account continued till November 2024 is factually incorrect, as the entries made in the bank account after the default date of 30.04.2024 were in respect of interest and penalties charged in the account by the Bank and not the withdrawals allowed. The CD was required to make the necessary deposit in the account so as to ensure that the interest charged in the account is repaid and the outstanding in the account remains below the sanctioned limit of Rs. 38 crores, which the CD failed to ensure, and as a result, the default and irregularity in the OCC Facility took place. As such, the date of default with respect to the OCC account stated by the Applicant as 30.04.2024 stands established. Similarly, in regard to the GECL Facility, it is observed from the copy of the Statement of Account attached on page no. 363, that the interest and the installment becoming due on 10.04.2024 was not paid by the CD. In the GECL-1.0 Facility as well, it is seen from the Statement of Account



on page no. 361 that there was no payment made by the CD after 26.03.2024, and as a result, the interest amount of Rs.4,46,925/- debited by the Applicant on the due date, i.e., on 26.04.2024, could not be paid, resulting in default in the said loan account. In view of the above, we are convinced that the default dates with respect to the different facilities availed by the CD from the Applicant as per the amendment made in the Form-1 on 03.06.2025 (as recorded in the order dated 18.06.2025) are factually correct. The said amendment was made pursuant to the leave granted by this Tribunal *vide* order dated 28.05.2025, and therefore, the earlier date of default stated in the original Application, i.e., 05.04.2024, is no longer relevant, and the objection made by the CD in regard to the same is hereby rejected. The CD has further stated that the Applicant has, in the Calculation Sheet attached as Annexure 36, pleaded the date of default as 05.07.2024. The said statement on the part of the CD is factually incorrect, as in the said calculation sheet, the Applicant has stated 05.07.2024 as the date of NPA for all three facilities and not as the date of default.

7.8 The CD has further argued that the Applicant has pleaded contradictory default dates — 05.04.2024 in its Application and 05.07.2024 in the NeSL certificate and accompanying documents — and that this discrepancy renders the Application defective. However, the Hon'ble Supreme Court in ***Asset Reconstruction Company v. Bishal Jaiswal*** [(2021) 6 SCC 366] and the Hon'ble NCLAT in *Jagdish Prasad Sarada v. Allahabad Bank* (*supra*) have clarified that the NPA date may be treated as the date of default for purposes of IBC. Furthermore, Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 permits



evidence to be supplemented post-filing to cure such defects. While consistency in pleadings is desirable, an error in recording the initial date of default — especially when clarified in rejoinder and substantiated by authenticated records — cannot render the application non-maintainable. What matters is whether default on any date prior to filing is demonstrated. In this case, the NeSL report and Bankers' Books record the default date as 05.07.2024, however, the Applicant has established with the help of the account statements attached along with the Application that the correct dates of default with respect to the three facilities are 30.04.2024, 10.04.2024 and 26.04.2024 and therefore even if in the NeSL records the date of NPA has been stated as the date of default, the same does not vitiate the Application. Further, we have already stated earlier that the original date of default mentioned in the Application as 05.04.2024 is no longer relevant after the amendment has been made to the Form-1.

7.9 The objection of the CD in regard to non-attachment of the account statements is also not tenable as the relevant statements of accounts, along with the certificates under Bankers' Books Evidence Act, have been attached along with the Application and the Rejoinder to the amended Reply. With the help of the bank statements along with all other documents, including documents relating to acknowledgement of debt by the CD attached along with the Application/Rejoinders, the Applicant has been able to establish the existence of debt and default, which is required for maintainability of the present petition/Application.

7.10 The CD has alleged that the Applicant is misusing the IBC as a recovery mechanism, evidenced by its simultaneous pursuit of remedies under



SARFAESI and the RDB Act. It is settled law that the mere pendency of proceedings under SARFAESI or RDB Act does not bar the initiation of insolvency proceedings under the IBC. Therefore, the simultaneous pursuit of debt recovery under SARFAESI does not amount to misuse of the IBC. The IBC serves a different purpose — resolution of insolvency and preservation of the corporate debtor as a going concern, and not mere recovery. The Adjudicating Authority's role is confined to verifying whether a default exceeding the threshold amount has occurred — and not to examine the motives or strategies of the creditor, unless *malafide* conduct is *prima facie* shown, which is not the case here.

7.11 It relies on *Vidarbha Industries (supra)* to argue that CIRP should not be used against solvent entities or to coerce repayment. We find this argument to be a misplaced one. In *Vidarbha*, the Hon'ble Apex Court held:

“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 but to admit the petition under Section 7 of the IBC.”

Vidarbha was a fact-specific case. Subsequently, courts and tribunals have clarified that *Vidarbha* does not override the binding precedent in *Innoventive Industries (supra)*, where the Supreme Court categorically held:

“28. ...The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete...”



Thus, unless the CD shows a compelling reason for the Tribunal to exercise discretion (such as *bona fide* solvency, legal impossibility to pay, or an abuse of process), *Vidarbha* cannot be relied upon to reject an otherwise complete and valid application under Section 7.

7.12 The IBC is not a recovery forum — nor it is a shield for delay, especially where the debtor has defaulted and not come forward with any viable resolution plan or evidence of solvency.

7.13 The CD has not produced any plausible restructuring proposal, willingness to settle, or evidence of solvency. On the contrary, it has raised technical objections without rebutting the core evidence of debt and default. The maintainability of the present Application under Section 7 of the IBC rests on whether the Applicant has demonstrated the existence of a “financial debt” and a “default” as required under Sections 5(8) and 3(12), respectively. The NeSL entries are authenticated, the outstanding amount exceeds Rs. 1 Crore, and default is established through multiple independent sources. Accordingly, the Application satisfies the conditions for admission under Section 7 of the IBC. The Applicant has also proposed the name of an IRP, Ms. Megha Agrawal, and as per the Form 2 attached along with the Application, no disciplinary proceedings are going on against her. Further, this Application is complete as all the required documents have been attached along with the Application.

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



ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) 333/MB/2025 filed under Section 7 of IBC, 2016, by Canara Bank, the Applicant (FC) for initiating CIRP in respect of Swaminarayan Diamonds Private Limited, the CD, is **admitted**.

We further declare a moratorium under Section 14 of IBC, 2016 with consequential directions as mentioned below:

- I. We prohibit:
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor, including the execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;
 - b) transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover, or enforce any security interest created by the Corporate Debtor in respect of its property, including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.



- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Ms. Megha Agrawal**, having **Registration No. as IBBI/IPA-001/IP-P-01456/2018-2019/12272**, and **e-mail address ip.meghaagrawal@gmail.com** having valid Authorisation for Assignment up to 31.12.2025 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 periodical 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, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XII. 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.
- XIII. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//AS//