NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1 & P2.

IA(I.B.C)/637(MB)2026

IN C.P. (IB)/1154(MB)2025

&

C.P. (IB)/1154(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **18.08.2026**

NAME OF THE PARTIES: **Asrec (India) Limited**

Vs

Landmark Motels and Travels Private Limited

Under Section 7 and 60(5) of the IBC.

ORDER

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

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

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IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.1154/MB/2025 with IA (I.B.C) No. 637(MB)/2026

[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]

IN THE MATTER OF:

ASREC INDIA LIMITED
[CIN: U67100MH2003GOI143291]
Unit No. 200A - 201, & 200B - 202, Ground Floor
Building No. 2, Solitaire Corporate Park, Andheri
Ghatkopar Link Road, Chakala - Andheri (E)
Mumbai 400093, Maharashtra.

…Financial Creditor/Applicant

V/s

LANDMARK MOTELS AND TRAVELS PVT. LTD
[CIN: U55101MH2001PTC130828]
201, Karishma Chambers, Sahar Village
Next to Bombay Cambridge High School
Andheri East
Mumbai 400059, Maharashtra.

...Corporate Debtor

Pronounced: 18.08.2026

CORAM:
HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

In CP and IA

Financial Creditor/Respondent in IA: Adv. Mr. Ganesh R. a/w Adv. Ms. Annu Sharma.

Corporate Debtor/ Applicant in IA: Adv. Mr. Shyam Kapadia a/w Adv. Ms. Somya i/b TN Tripathi for Co.

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This is an Application bearing C.P. (IB) No.1154/MB/2025 filed on 27.10.2025 by ASREC India Limited, the Applicant (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") through Mr. Sunil Korgaonkar – Chief Manager of the Applicant authorised *vide* Power of Attorney dated 05.10.2025 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Landmark Motels and Travels Pvt. Ltd., the Corporate Debtor (CD).

1.2 The Applicant is Public Limited Company incorporated under the provisions of Companies Act, 1956 on 25.11.2003. The CD herein is a non-government company incorporated on 12.02.2001 in ROC, Mumbai. It is private company and is classified as 'company limited by shares' and engaged in business of hotels, camping sites and other provision of short-stay accommodation, restaurant facilities operated in connection with provision of lodging.

1.3 The Applicant has proposed the name of Mr. Anil Kohli having registration no. IBBI/IPA-001/IP-P00112/2017-2018/10219 to act as an IRP along with his written communication in Form-2 and valid AFA till 30.06.2026. On perusal of the IBBI website, it is seen that the AFA of the proposed IRP is valid till 30.06.2027.

1.4 The Applicant has relied on the following documents:

i. Copy of Power of Attorney

ii. Copy of Master Data of the Corporate Debtor

iii. Copy of written consent of the proposed IRP.

iv. Copy of the table showing the workings for detailed computation of the default amount and the interest

v. Copy of the CERSAI Report

vi. Copies of the orders dated 05.11.2024, 17.06.2025 and 19.09.2025 of the Hon'ble Debt Recovery Tribunal

vii. Copy of the certificate as per the provisions of the Bankers' Books Evidence Act, 1891

viii. Copy of Board Report along with the audited Balance Sheet of the Corporate Debtor for the financial year ending March 31, 2019

ix. Copy of the of the Assignment Agreement dated 28.02.2025 along with the intimation to the Corporate Debtor

x. Copy of the of the sanction letter dated 09.05.2018

xi. Copies of the letters dated 17.01.2019 and 23.11.2020

xii. Copy of the letter dated 06.01.2025 by the Corporate Debtor

2. AVERMENTS OF THE APPLICANT

2.1 The matter was first listed on 03.11.2025 wherein the Applicant requested for placing on record NeSL record of default and to modify Form-1 qua the date of default. The Applicant in compliance of the order, filed an Additional Affidavit dated 12.11.2025 along with amended Form-1 and OTS letter dated 21.01.2022 issued by the CD. The same is recorded *vide* interim order dated 17.11.2025. The amended facts are recorded below:

2.2 As per Part-IV of the amended Application, the total amount claimed to be in default by the Applicant is Rs. 46,62,98,533/- (Forty-Six Crores Sixty-Two Lakhs Ninety-

Eight Thousand Five Hundred and Thirty-Three Rupees). The following is the table giving the details of the outstanding amount:

A/c No.	Principal Amt	Interest and other charges	Total Liability
6722552119	14,96,97,505	16,80,23,777	31,77,21,282
6731888241	4,12,54,197	4,73,30,999	8,85,85,196
6952784635	3,80,89,196	2,19,02,858	5,99,92,054
	22,90,40,898	**23,72,57,635**	**46,62,98,533**

2.3 It is submitted that the CD availed the initial loans from State Bank of India and DHFL. Around 2018, the loan was taken over by Indian Bank (who assigned it to ASREC India Pvt. Ltd. i.e., Financial Creditor herein) for which properties of the CD were mortgaged. The CD and Indian Bank executed a Deed of Mortgage dated 15.02.2019 whereby the CD deposited the title deeds in respect of the properties mortgaged with the Indian Bank.

2.4 The sanctioned debt was disbursed from 09.05.2018 onwards by the Indian Bank. The said credit facilities were modified by the letter dated 17.01.2019 excluding takeover term loan of Rs. 4.85 crores from DHLF. Thereafter, *vide* letter dated 23.11.2020 Indian Bank further sanctioned Ind GECLS working capital loan of Rs. 4 crores.

2.5 The CD defaulted the account on 30.11.2019.

2.6 Therefore, due to default by the CD in repaying the outstanding debt, the loan account was declared as NPA on 28.02.2020, in accordance with RBI guidelines for the restructured loan accounts.

2.7 The debt obligation to the Applicant arises out of the Assignment Agreement dated 28.02.2025.

2.8 Owing to the aforesaid default and failure of the CD to repay the amounts as called upon, the Applicant filed the present application under Section 7 of the Code to initiate CIRP against the CD.

2.9 The details of the security held are as follows:

i. Shop No.2, Ground Floor adm. area 600 sq. ft. (Carpet) alongwith Basement of 535 Sq. Ft. (Carpet) for Godown purpose in the Building known as "Karishma Chambers Business Centre Co-Op. Premises Society Ltd." situated at Batnan Wada, Village Sahar, Next to Bombay Cambridge School, Off Sahar Rd., J.B. Nagar, Andheri (E), Taluka Andheri, Mumbai-400 069.

ii. Offices in the Building known as "Karishma Chambers Business Centre Co- Op. Premises Society Ltd." situated at Baman Wada, Village Sahar, Next to Bombay Cambridge School, Off. Sahar Rd., J.B. Nagar, Andheri (E), Taluka Andheri, Mumbai-400069:

   i. Office No.201 on 2nd Floor adm. area 593 Sq. ft. (Carpet),
   ii. Office No.202 on 2nd Floor adm. area 485 Sq. ft. (Carpet),
   iii. Office No.203 on 2nd Floor adm. area 446 Sq. ft. (Carpet),
   iv. Office No.204 on 2nd Floor adm. area 378 Sq. ft. (Carpet),
   v. Office No.205 on 2nd Floor adm. area 304 Sq. ft. (Carpet),
   vi. Office No.206 on 2nd Floor adm. area 252 Sq. ft. (Carpet),
   vii. Office No.301 on 3rd Floor adm. area 458 Sq. ft. (Carpet),
   viii. Office No.302 on 3rd Floor adm. area 458 Sq. ft. Carpet),
   ix. Office No.303 on 3rd Floor adm. area 446 Sq. ft. Carpet),
   x. Office No.304 on 3rd Floor adm. area 378 Sq. ft. Carpet),

xi. Office No.305 on 3rd Floor adm. area 304 Sq. ft. Carpet),

xii. Office No.306 on 3rd Floor adm. area 252 Sq. ft. Carpet),

xiii. Office No.40l on 4th Floor adm. area 593 Sq. ft. (Carpet),

xiv. Office No.402 on 4th Floor adm. area 458 Sq. ft. (Carpet),

xv. Office No.403 on 4th Floor adm. area 446 Sq. ft. (Carpet),

xvi. Office No.404 on 4th Floor adm. area 378 Sq. ft. (Carpet),

xvii. Office No.405 on 4th Floor adm. area 304 Sq. ft. (Carpet),

xviii. Office No.406 on 4th Floor adm. area 252 Sq. ft. (Carpet)

iii. Entire 6th Floor adm. area 2431 Sq. ft. (Carpet) m the Building known as "Karishma Chambers Business Centre Co-Op. Premises Society Village Ltd." Sahar, situated at Baman Wada, Next to Bombay Cambridge School, Off. Sahar Rd., J.B. Nagar, Andheri (E), Taluka Andheri, Mumbai-400 069.

iv. FlatNo.35 on Ground floor admeasuring area 550 Sq. ft. (built-up) in the Building known as "Vishal Nagar" Co-op. Hsg. Society Ltd. Situated at Seven Bungalows, Versova Road, Andheri (W), Mumbai-400 061.

v. Flat No.ll on Ground floor admeasuring area 590 Sq. ft (built-up) in the Building known as "Vishal Nagar" Co-op. Hsg. Society Ltd. Situated at Seven Bungalows, Versova Road, Andheri (W), Mumbai-400 061.

2.10 The CD filed a Securitization Application No. 269 of 2022 with the DRT, Mumbai against the Indian Bank which was disposed of *vide* order dated 05.11.2024. Thereafter, the CD again field a Securitization Application No. 108 of 2024 with the DRT, Mumbai against the Indian Bank and the same is pending adjudication.

2.11 Subsequently, Indian Bank filed Original Application No. 698 of 2024 before the Hon'ble DRT to recover the debt from the CD and the matter is pending adjudication.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 The CD filed Affidavit-in-Reply on 13.01.2026, which is affirmed by Mr. Mohammad Nayeem Z I Sait – Authorised Signatory of the CD *vide* Board Resolution dated 22.01.2024.

3.2 The CD in its reply states that the Applicant has filed three separate Company Petitions against the guarantors to the CD under Section 95 of the Code with particulars as under:

Date of filing	Petition /diary No.	Name of guarantor
07/06/2024	C.P. (IB)/515(MB)2024	Koppara Gul Hussain Sait
24/04/2024	C.P. (IB)/542(MB) 2024	Sabas J Rodrigues
06/03/2024	C.P. (IB)/373(MB) 2024	Davis Kolattukudy Paul

3.3 The Applicant is aware of the pendency of the above Section 95 Petition as the same is disclosed in Assignment Agreement dated 20.02.2025. The above Applications are identical in the forms and contents in respect of same debt against the remaining guarantors.

3.4 The CD referring to Section 3(11), 95 and 96 of the Code and judgments of Hon'ble Supreme Court in ***State Bank of India v. Ramkrishnan*** [(2018) 17 SCC 394] and ***Dilip B. Jiwrajka v. Union of India*** [2023 SCC OnLine SC 1530] submits that the "debt" against the borrower and guarantors are one and the same liability and obligation. The claim of the Applicant does not make any distinction between debt vis-a-vis borrower or the guarantors.

3.5 Further, the CD relies on the judgment of *Tata Capital Ltd. v. Geeta Passi* [2024 SCC OnLine Born 1897], wherein the Hon'ble Bombay High Court has considered the relevant expressions in section 3(11) and moratorium under section 96 and compared the same with section 14 and has rightly held that the moratorium under section 96 in respect of debt will apply to the guarantor and the borrower in respect of the subject-debt. The literal construction put up by the Hon'ble High Court in Tata Capital Ltd. v. Geeta Passi finds support of a report of the Insolvency Law Committee dated 20.02.2020. The Insolvency Law Committee has considered the scope of moratorium under section 96 of the Code as well as the decision of the Hon'ble Supreme Court in State Bank of India v. Ramakrishnan and at Chapter- 5 and observed thus:

> *"6.1. The provisions for a moratorium and interim moratorium under Part III of the Code are currently worded to apply in relation to all the 'debts' and not just in respect of the 'debtor'. Section 96 and Section 101, which respectively provide for an interim moratorium and a moratorium in respect of a PIRP, state that it shall apply "in relation to all the debts". As regards the bankruptcy process as well, Section 124 provides for an interim moratorium "against the properties of the debtor in respect of any of his debts" and Section 128 of the Code bars creditors of the bankrupt, in respect of a bankruptcy debt, from initiating "any action against the property of the bankrupt in respect of such debt. " Accordingly, these provisions stay legal actions in respect of any 'debt' of the debtor or the bankrupt, as the case may be.*
>
> *6.2. The Committee noted that a moratorium "in relation to all the debts" or "in respect of any debt" will have very wide application as it will apply to all third parties that bear any relation to such debt. This would result in a stay on a variety of proceedings and recovery actions that involve third parties in respect of such 'debt'. The Hon'ble Supreme Court, in State Bank of India v Ramakrishnan, 207 also noted the wide scope of the moratorium provisions under Part III of the Code. In this case, the Supreme Court observed that the word 'debt' in the moratorium provisions under Part III of the Code made the scope of these provision broader than the moratorium provisions under Part II of the Code, which the use of the word 'debtor'."*

3.6 It is submitted that the report of Insolvency Law Committee is permissible external aids for a proper construction of the Act.

3.7 The CD submits that it is entitled to statutory benefits of "Framework for Revival and Rehabilitation of MSMEs" notified by the Government of India under Section 9 of the MSMED Act as well as the RBI guidelines as the CD is registered as MSME.

Further, the CD relies on the judgment of Hon'ble Supreme Court in *Pro Knits v. Board of Directors of Canara Bank* [2024 SCC Online SC 1864] for compliance of RBI guidelines dated 17.03.2015, as mandated by the Supreme Court.

3.8 It is submitted that section 21 read with section 35-A of Banking Regulation Act makes it clear that Regulations issued by the Reserve Bank of India to the banking companies are binding on them and they are bound to comply with such directions.

3.9 The Bank ought to have initiated the process under the Framework for Revival and Rehabilitation of MSME accounts of the CD before assuming the accounts in default on 30.11.2019 or classifying the account as NPA on 28.02.2020.

3.10 The CD contends that the there is no evidence to prove default. The Applicant has not furnished the NeSL record of default nor has placed on record any document to prove the alleged default on the basis of which default can be proved that default occurred on 30.11.2019. The Applicant has made contradictory statement regarding alleged default. Section 95 petitions are filed on basis of alleged default by the CD on 28.02.2020 whereas the present Application is filed on the basis of the purported default on 30.11.2019. In respect of same debt, different dates of default are alleged by the Applicant and the Bank in the different proceedings. The case of the Applicant regarding the default is a false and full of contradiction as apparent from the following:

i. In first demand notice dated 11.10.2021 under section 13(2) of SARFAESI Act, the Bank has alleged the date of default as 30.09.2021 ["date of NPA"].

ii. In second demand notice dated 25.10.2023 under section 13(2) of SARFAESI Act, the Bank has alleged the date of default as 28.02.2020 ["date of NPA"] without any explanation

iii. In NeSL Certificate relied by the Bank in section 95 Petition the date of default is shown as 30.11.2023 with amount in default at Rs.2,06,51,822/-.

iv. Given the loan restructuring *vide* letter dated 04.03.2020, which rescheduled the installments starting from 01.09.2020, the alleged date of default cannot be either 30.11.2019 or 28.02.2020.

v. Vide letter dated 23.11.2020 the bank had sanctioned GECL Covid-19 loan. As per the RBI circular the covid loan was permitted to the borrower whose account was "standard" as on 01.03.2020. The sanction letter dated 23.11.2020 belie the case of the Petitioner regarding default of 30.11.2019.

3.11 Pursuant to the request letter dated 24.02.2020, the Bank vide its letter dated 04.03.2020 restructured the existing term loans. As per the terms and conditions of restructuring, term loan of Rs.16.24 crores was payable in 144 EMI commencing from 01.09.2020 and term loan of Rs.4.50 crores repayable in 150 EMI commencing from 01.09.2020. The Bank granted a moratorium of six months for repayment of EMI including interest chargeable. The restructuring of the term loans was acted upon by the Bank adjusting Covid loan sanctioned *vide* letter dated 23.11.2020 for Rs.4 crores. Out of Rs.4 crores Covid loan, the bank adjusted Rs.3,15,04,446/- towards EMI in term loans. The statement will show that default, if any had occurred during section 10-A period and as such the present Petition is not maintainable.

3.12 The Applicant asserted claim in two term loan a/c nos. 6722552119 and 6731888241 and GECLS Covid Term Loan of Rs.4 crores [A/c 6952784635]. The covid loan was sanctioned on 23.11.2020. There is no question of any default having occurred in the covid loan account on 30.11.2019. In other two loans the Bank had debited monthly interest in the accounts, which were regularly paid by the CD. The Bank had not claimed any EMI in respect of Term Loans as no such provision was made in the sanction letter. The term loans were actually dropline overdraft and accounts taken over from the SBI and they were maintained accordingly. On 30.11.2019, both the term loans were well within the sanctioned limits as apparent from the following:

Term loan A/c	sanctioned limit	outstanding as on 30/11/2019 claimed by the Bank
6722552119	17.00 crores	16,42,89,320/-
6731888241	04.50 crores	4,48,33,099/-

3.13 The Applicant is mala fidely dragging the CD to the present insolvency proceeding. The Code cannot be used for recovery of the amount pending for adjudication in DRT Mumbai as has been held by Hon'ble Supreme Court in catena judgments.

4. REJOINDER

4.1 The Applicant submits that the CD in its reply has relied upon the section 96(1)(a) of the Code which provides that upon filing of an application under section 94 or section 95, an interim moratorium shall commence in relation to "'all debts ' and during such period any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed and creditors shall not initiate any legal action in respect of any debt.

4.2 The Hon'ble Delhi High Court in *Axis Trustee Service Limited V Brij Bhushan Singal & Anr.* CS(COMM) 8/2021, held that the effect of the interim moratorium is only in respect of the debts of a particular debtor and by no stretch of imagination can it be said to include other independent guarantors in respect of the same debt of a corporate debtor.

4.3 Further, the Hon'ble Delhi High Court in reference to the Hon'ble Supreme Court judgment in *State Bank of India v. V Ramakrishnan and Anr.*, (2018) 17 SCC 394 held that Creditors would have an independent recourse against either of the guarantors and the inability to recover against one of the guarantors would not come in the way of making recoveries against the other guarantors.

4.4 In *Bhavesh Gandhi vs Central Bank of India* (Company Appeal (AT)(Ins) no. 923 of 2022 (on 07.02.2023) the Hon'ble NCLAT held that once an interim moratorium commences against a Personal Guarantor no further proceedings under section 95 can be initiated against the same Personal Guarantor by another creditor. The Hon'ble NCLAT clarified the initiation of moratorium and applicability of section 95 and 96.

4.5 Relying on the judgment on the Hon'ble Supreme Court in *Saranga Anilkumar Agganval v. Bhavesh Dhirajlal Sheth & Ors.,* it is submitted that the Hon'ble SC has observed that the purpose of the moratorium under section 96 of the IBC is to safeguard the assets of the debtor so that the insolvency resolution process may proceed in an orderly and effective manner. The individual insolvency proceedings are primarily for restructuring of the personal debts and providing relief specifically to the debtor i.e. personal guarantor. It seeks to restrain creditors from initiating or continuing unilateral recovery actions that could undermine or defeat the objective of the insolvency framework.

4.6 Thus, the plain language of section 96 makes it abundantly clear that the interim moratorium is in relation to the debtor against whom the application under section 94 or 95 is filed i.e., the individual or personal guarantor and no proceeding shall be initiated by the creditors of the debtor.

4.7 The reliance placed by the CD on *Tata Capital Ltd. v. Geeta Passi & Ors*. is erroneous and without appreciating the factual and legal distinction in the present case. In the said case the borrower was a proprietorship concern, and the guarantor was an individual. A proprietorship concern has no separate juristic personality distinct from its proprietor and therefore moratorium under section 96 which is for individuals/personal guarantors shall extend to both the borrower and personal guarantor i.e., the proprietor and the personal guarantor. However, placing reliance on this judgment is not applicable to the present case as the present case pertains to Part II of the Code whereas the Tata Capital Ltd. v. Geeta Passi & Ors., pertains to Part III and there is a difference between both.

4.8 The reliance placed by the CD on Paragraphs 6.1 and 6.2 of the Insolvency Law Committee Report dated 20.02.2020 is selective and misconceived. While those paragraphs merely note the broad language used for the expression "in relation to all the debts under Part III", the Committee in Paragraph 6.4 and 6.5 expressly clarified that such a wide interpretation was not in line with legislative intent. It was categorically observed that the moratorium under Part III was not intended to stay proceedings against third parties, including corporate debtors, guarantor or co-borrower, merely because such proceedings relate to the same debt. Further, the Committee recommended that to remove ambiguity, the word 'debt' in sections 96 101, 124 and 128 be substituted with 'debtor' and that a clarification similar to section 14(3)(b) be inserted to ensure that proceedings against a guarantor are not stayed. The combined reading of sections 2(e) and 60(2) and (3) also envisages concurrent proceedings against a corporate debtor and its guarantor.

4.9 The CD in the reply has blatantly lied that the Applicant did not follow the RBI framework which is in fact false because only pursuant to the framework the loan account of the CD was restructured. The framework does not contemplate multiple indefinite restructuring cycles at the unilateral insistence of the borrower. The clause 9 of the framework clearly states "if the Committee decides on options of either 'Rectification ' or 'Restructuring', but the account fails to perform as per the agreed terms under these options, the Committee shall initiate recovery under option 5.3(c). Therefore, initiation of recovery or insolvency proceedings is fully consistent with the framework itself.

4.10 The Applicant has placed on record NeSL record of default in Form-D in the rejoinder which is under "deemed to be authenticated" status.

4.11 The allegations regarding contradictory date of default with respect to section 95 applications is blatantly incorrect as the application filed against the personal guarantors is basis the invocation of the guarantees. Further, the date of default is recorded basis the receipt of the demand notice issued therein. Hence, the date of default of personal guarantors would never be the same as the date of default of the CD. On account of restructuring of the account of the CD on 04.03.2020 and thereafter CD not complying to the terms of restructuring, the account was declared as NPA effective 28.02.2020 in accordance with RBI guidelines on the treatment of restructured accounts. Considering that NPA is declared by the bank after 90 days of default, the date of default is 30.11.2019.

5. INTERLOCUTORY APPLICATION BY APPLICANT (CORPORATE DEBTOR) (I.A. No. 637 OF 2026)

5.1 This is an Interlocutory Application (IA) bearing No. 637/MB/2026, filed by Landmark Motels and Travels Private Limited, the Applicant/Corporate Debtor, on 13.01.2026 under section 60(5) of the Code against the ASREC India Limited, the Respondent/Financial Creditor.

5.2 This Application is for stay of the Company Petition No. 1154/2025 filed in relation to alleged "debt" in respect of which all legal proceedings by any person are to be kept in abeyance as per statutory moratorium contained in Section 96 of the Code. by the Respondent.

5.3 The Applicant seeks the following prayers against the Respondent:

i. *That the further proceedings in Company Petition No. CP (IB)/ 1154 (MB)/2025 in relation to the debt forming part of section 95 petitions as per the particulars set out in para-7 above may kindly be stayed under section 96 of the Insolvency and Bankruptcy Code, 2016.*

ii. *For ad-interim relief and interim relief in terms of prayer(a) above.*

iii. *For such further and other reliefs and the nature and circumstances of the case may require*.

5.4 It is submitted that in respect of same debt forming part of the above company petition, the Respondent has filed three separate Company Petitions against the guarantors under Section 95 of Code.

5.5 Section 95 of the Code permit the creditor to file an Application to initiate CIRP which is presently restricted against the guarantor to the CD as per Insolvency and Bankruptcy (Application to Adjudication Authority for Insolvency Resolution Process of Guarantors to Corporate Debtors) Rules, 2019.

5.6 It is submitted that on filing of Section 95 petition interim moratorium under Section 96 become operative in relation to "all debts" as per Section 96 of the Code.

5.7 The Applicant relies on the judgment of Hon'ble Supreme Court in State Bank of India v. V Ramakrishnan [(2018) 17 SCC 394], wherein the Hon'ble

Supreme Court going into detail and examining the relative scope and ambit of moratorium contemplated by Section 14 vis-à-vis Section 96 has held thus:

> ***".... the protection of the moratorium under these Sections*** [96 and 101] ***is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed .*** ...."

5.8 In ***Dilip B. Jiwrajka V Union of India*** [2023 SCC OnLine SC 1530] while upholding the constitutional validity of various provisions of IBC Code, 2016 including sections 94, 95 and 96 thereof, the Hon'ble Supreme Court has held thus,

> *"Section 96, as its marginal note indicates, deals with an "interim-moratorium". In terms of section 96, the interim moratorium takes effect on the date of the application. In other words, the very submission of an application under section 94 or section 95 triggers the interim moratorium which then ceases to have effect on the date of the admission of the application (under section 100).The consequences which flow from an interim moratorium are specified in clause (b) of sub- section (1) of section 96. The impact of the interim- moratorium under section 96 is that a legal action or proceeding pending in respect of any debt is deemed to have been stayed and the creditors or the debtors shall not initiate any legal action or proceedings in respect of any debt. "*

5.9 It is submitted that the debt against the borrower and guarantors are one and the same liability and obligation. The claim of the Respondent does not make any distinction between debt vis-à-vis borrower or guarantor.

5.10 In ***Tata Capital Ltd. v. Geeta Passi*** [2024 SCC OnLine Bom 1897], the Hon'ble Bombay High Court while exercising writ jurisdiction has interpreted relevant statutory expressions in section 3(11) and Sections 95 and 96 of the Code and held thus:

> *"........ when the National Company Law Tribunal granted a moratorium under section 96 of the Insolvency and Bankruptcy Code in favour of Mr.Tarun Kapoor who was the principal borrower being the proprietor of*

SMC and Mrs. Pavan Kapoor, being the guarantor, the same will have to be construed as a moratorium in respect of the entire "debt". it is the "debt" and its entitlement which has been claimed to be put before the learned arbitrator, for decision, in the arbitration proceedings. The claim does not make any distinction between a "debt", vis-a-vis Mr. Tarun Kapoor as a principal debtor, or the other parties thereto as the guarantors or even considering their coextensive liability. The "debt", is the debt of SMC/Tarun Kapoor as principal borrowers as well as of the guarantors. ***The "debt", for the purpose of the moratorium, cannot be severed into the "debt" of the principal borrower or for that matter of one of the guarantors on the one hand, and the debt of the other guarantors"***

5.11 The literal construction put up by the Hon'ble High Court in Tata Capital Ltd. v. Geeta Passi finds support of a report of the Insolvency Law Committee dated 20.02.2020. The Insolvency Law Committee has considered the scope of moratorium under section 96 of the Code as well as the decision of the Hon'ble Supreme Court in State Bank of India v. Ramakrishnan and at Chapter- 5 and observed thus:

"6.1. The provisions for a moratorium and interim moratorium under Part III of the Code are currently worded to apply in relation to all the 'debts' and not just in respect of the 'debtor'. Section 96 and Section 101, which respectively provide for an interim moratorium and a moratorium in respect of a PIRP, state that it shall apply "in relation to all the debts". As regards the bankruptcy process as well, Section 124 provides for an interim moratorium "against the properties of the debtor in respect of any of his debts" and Section 128 of the Code bars creditors of the bankrupt, in respect of a bankruptcy debt, from initiating "any action against the property of the bankrupt in respect of such debt. " Accordingly, these provisions stay legal actions in respect of any 'debt' of the debtor or the bankrupt, as the case may be.

6.2. The Committee noted that a moratorium "in relation to all the debts" or "in respect of any debt" will have very wide application as it will apply to all third parties that bear any relation to such debt. This would result in a stay on a variety of proceedings and recovery actions that involve third parties in respect of such 'debt'. The Hon'ble Supreme Court, in State Bank of India v Ramakrishnan, 207 also noted the wide scope of the moratorium provisions under Part III of the Code. In this case, the Supreme Court observed that the word 'debt' in the moratorium provisions under Part III of the Code made the scope of these provision broader than the moratorium provisions under Part II of the Code, which the use of the word 'debtor'."

5.12 It is submitted that the report of Insolvency Law Committee is permissible external aids for a suitable construction of the Act.

5.13 The Hon'ble High Court has considered the relevant expressions in Section 3(11) and moratorium under Section 96 and compared the same with Section 14 and has rightly held that the moratorium under Section 96 in respect of debt will apply to the guarantor and the borrower in respect of the subject-debt.

6. REPLY TO THE I.A. BY THE RESPONDENT/FINANCIAL CREDITOR

6.1 The Respondent relies on the judgment in *Bhavesh Gandhi v. Central Bank of India* Company Appeal (AT)(Ins) no. 923 of 2022 wherein the Hon'ble NCLAT held that once an interim moratorium commences against a Personal Guarantor, no further proceedings under Section 95 can be initiated against the same Personal Guarantor by another creditor. The Hon'ble NCLAT clarified the initiation of moratorium and applicability of section 95 and 96 as reproduced hereinbelow:

> "14. ...Section 96(1)(a) provides that an interim-moratorium shall commence on the date of the application in relation to all the debts. Further, Section 96(1)(b) provides that during the moratorium period (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt. The use of expression 'creditors of the debtor' obviously refers to other creditors of the debtor apart from the creditor on whose application interim moratorium has commenced. In the present case, the date on which application was filed by the Central Bank of India under Section 95 is 12.04.2021 i.e. after the commencement of the interim moratorium, as noted in the order dated 21.06.2021. The interim moratorium under Section 96 (1)(b)(ii) creates a prohibition on the creditors of the debtor from initiating any legal action in respect of any debt. The use of expression 'any debt' also, clearly indicate that debt on basis of which moratorium has commenced is not

contemplated by the expression 'any debt'. With regard to all debts of debtor i.e. Personal Guarantor in the present case, no proceeding can be initiated by virtue of Section 96(1)(b)."

6.2 The Hon'ble NCLAT's decision clearly pertains to multiplicity of proceedings against the same personal guarantor under Chapter III of the Code. Further, the plain language of section 96 makes it abundantly clear that the interim moratorium is in relation to the debtor against whom the application under section 94 or 95 is filed, i.e., the individual or personal guarantor and no proceeding shall be initiated by the creditors of the debtor. Section 96 (1)(b)(ii) creates a prohibition on the creditors of the debtor from initiating any legal action in respect of any debt. Therefore, in the present case, initiation of the proceedings against the personal guarantors does not restrict the Petitioner from initiating proceedings against the Applicant i.e, Corporate Debtor.

6.3 It is submitted that the Code provides separate statutory regimes for Part II-Insolvency Resolution and Liquidation of Corporate Persons (sections 4-77) and Part III — Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms (sections 78—187). Also, the commencement of moratorium under section 14 (applicable to Corporate Debtors) and section 96 (applicable to Individuals/Personal Guarantors) operates in distinct and independent manner with respect to commencement, application and effect. The Hon'ble Supreme Court in Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth & Ors. recognized that sections 96 and 101 provide a distinct moratorium applicable to personal guarantors, separate from the moratorium under section 14 applicable to corporate debtors.

6.4 It is a settled principle that the liability of the principal borrower and guarantor is co-extensive. However, such co-extensiveness does not mean they are not independently liable for the debt as a Corporate Debtor is a separate legal entity distinct from its guarantors. The reliance placed by the Applicant on Tata Capital (supra) is erroneous and without appreciating the factual and legal distinction in the present case. In the said case where the Hon'ble Bombay High Court held that moratorium under section 96 in respect of debt will apply to the guarantor and the borrower in respect of the subject-debt is misconceived and not applicable to the present case. In the said case the borrower was a proprietorship concern, and the guarantor was an individual. A proprietorship concern has no separate juristic personality distinct from its proprietor and therefore, moratorium under section 96 which is for individuals/personal guarantors shall extend to both the borrower and personal guarantor i.e, the proprietor and the personal guarantor. However, placing reliance on this judgment is not applicable to present case as the present case pertains to Part II of the Code whereas the Tata Capital Ltd. (supra) pertains to Part III and there is a difference between both.

6.5 The reliance placed by the Applicant on Paragraphs 6.1 and 6.2 of the Insolvency Law Committee Report dated 20.02.2020 is selective and misconceived. While those paragraphs merely note the broad language use for the expression "in relation to all the debts" under Part III. The Committee in Paragraph 6.4 and 6.5 expressly clarified that such a wide interpretation was not in line with legislative intent. It was categorically observed that the moratorium under Part III was not intended to stay proceedings against third parties, including corporate debtors, guarantors or co-borrowers, merely because such proceedings relate to the same debt.

6.6 Further, the Committee recommended that, to remove ambiguity, the word "debt" in sections 96, 101, 124 and 128 be substituted with "debtor", and that a clarification similar to section 14(3)(b) be inserted to ensure that proceedings against a guarantor are not stayed. The combined reading of sections 2(e) and 60(2) and (3) also envisages concurrent proceedings against a corporate debtor and its guarantor.

> "6.5. However, for abundant caution and avoidance of doubt, it was concluded that reference to 'debt' should be appropriately substituted with the word 'debtor' in Sections 96, 101, 124 and 128 of the Code. Finally, it was added that it may be necessary to clarify that the moratorium will not apply to proceedings against a party to a contract of guarantee with the debtor. In this regard, a clarification may be inserted in these moratorium provisions that is similar to Section 14(3)(b) of the Code."

6.7 The Applicant has placed reliance on various judgments for principle of literal interpretation and it was held that the legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Therefore, if the legislative intent were to stay corporate insolvency proceedings upon initiation of personal guarantor proceedings, the Code would have expressly provided so, however, no such provision exists. Section 96 creates a bar only in respect of "legal action or proceedings in respect of any debt" against the debtor who has invoked or against whom Section 95 has been invoked. There is no provision under the Code which states that filing of a section 95 application or commencement of interim moratorium under section 96 against a personal guarantor shall result in automatic stay of proceedings under section 7 against the Corporate Debtor. The Corporate Debtor is a separate legal entity and is not the "debtor" under the section 95 application. Thus, accepting the Applicant's contention would result in an unintended consequence where initiation of insolvency against a personal guarantor could indefinitely stall statutory proceedings against a defaulting Corporate Debtor, an outcome neither contemplated nor intended by the Code.

7. REJOINDER TO THE I.A. BY THE APPLICANT/CORPORATE DEBTOR

7.1 It is submitted that the Respondent has essentially raised four grounds: (a) *firstly* scope and effect of Section 96 is limited to personal guarantor, (b) *secondly* there is distinction between Part II (Corporate Debtor) and Part III (Personal Guarantor) proceedings, (c) *thirdly* Independent liability of corporate debtor and guarantor for the same debt (d) *fourthly* no statutory bar to continuation of Section 7 proceedings. It is respectfully submitted that each of the above issues raised by the Petitioner is no more *res* - *integra* and is already covered by binding decisions of the Hon'ble High Court in ***Tata Capital Limited v. Geeta Passi*** [2024 SCC OnLine Born 1897]. Para -10 of the judgment is complete answer to the issues raised by the Petitioner.

7.2 The legal proceedings initiated by the Petitioner by way of present petition in respect of debt are bound to be stayed in view of interim-moratorium operative under section 96 of the IBC, 2016 in respect of same debt forming part of the present petition. The restrictive construction put up by the Petitioner to section 96 of the Code is erroneous on plain reading of the said provisions. The expression used "in relation to all the debts" and "in respect of any debt" will have very wide application and will apply to all third parties having any relation to such debt. The above expressions used are very clear and do not admit any ambiguity. The true and legal meaning of an enactment is derived by considering the meaning of words used in the Act. While construing enacted words the courts and tribunals are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used - as held by the Privy Council in Emperor v. Benoari Lal Sharma [AIR 1945 PC 48]

7.3 The literal construction put up by the Hon'ble High Court in *Tata Capital Ltd. v. Geeta Passi* finds support from a report of the Insolvency Law Committee dated

20/02/2020. The Insolvency Law Committee has considered the scope of moratorium under section 96 of the Code as well as the decision of the Hon'ble Supreme Court in *State Bank of India* v. *Ramakrishnan.*

7.4 It is submitted that the report of Insolvency Law Committee is permissible external aids for a suitable construction of the Act. The celebrated Author, Justice G.P. Singh in 11th Edition on the Principles of Statutory Interpretation has observed the admissibility of the Committee's Report in construing enactment.

8. <u>WRITTEN SUBMISSIONS OF FINANCIAL CREDITOR</u>

8.1 The Applicant filed written submissions on 17.03.2026 briefly stating the oral submissions on behalf of the Financial Creditor. Further, this Tribunal directed the parties to file revised written submissions with respect to date of default. In compliance of the same, the Financial Creditor filed its written submissions stating the following:

8.2 The contention of the CD that the petition is covered under Section 10A period i.e., 25.03.2020 till 24.03.2021 is vehemently denied. The CD started defaulting on repayment prior to the 10A period and continued to default even after that and therefore cannot be covered under Covid 19 moratorium due to a continuing default which is a settled position in law.

8.3 The date of default is explained through series of actions as tabulated below:

DATE	PARTICULARS	REMARKS
09.05.2018 & 17.01.2019	Indian Bank sanctioned to take over a dropline overdraft facility as term loan from SBI and a top-up term loan of the Corporate Debtor.	*The first disbursal of the loan amount was done on 06.02.2019*
30.11.2019	Corporate Debtor defaulted on its payment.	*The date from which the account was overdue thereafter for more than 90 days, made the account eligible to be classified as NPA as per the RBI guidelines.*
24.02.2020	Corporate Debtor requested Indian Bank for restructuring of its loan account.	
28.02.2020	Corporate Debtor's overdue was more than 90 days and hence the loan account was eligible to be declared as NPA	*Since the loan account was restructured in accordance to RBI guidelines, the account was regularized subject to payment terms as per the restructured agreement. Upon, failure by the Corporate Debtor to honour the restructured terms of payment, the account of Corporate Debtor was declared as NPA with retrospective effect pursuant to RBI guidelines.* *Further, the bank has reversed all the accrued interest till date of NPA.*
04.03.2020	Indian Bank approved the restructuring proposal	*The Repayment was due from 01.09.2020 after the holiday period of 6 months.*
23.11.2020	Indian Bank sanctioned GECLS Covid 19 term loan	*This loan was sanctioned with a 12 months holiday period with payments due and payable from 27.11.2021.*
30.09.2021	90 days overdue of the restructured loan accounts	*For an un-restructured account, the date of NPA would have been 30.09.2021, however as per the RBI guidelines the restructured accounts are declared NPA to the original date and they get no fresh lease on NPA therefore, 28.02.2020.*
04.12.2021	Reversal of accrued interest of the loan accounts	*In accordance with RBI guidelines, loan accounts are declared as NPA retrospectively, i.e, effective 28.02.2020 and therefore, interest accrued during the period since 28.02.2020 till 04.12.2021 was reversed.*
21.01.2022	Corporate Debtor requested for settlement of the loan of Indian Bank acknowledging the outstanding debt.	*Acknowledgment of debt extends the period of the limitation.*
25.10.2023	Indian Bank issued demand notice u/s 13(2) to the Corporate Debtor.	*Indian Bank classified account as NPA as on 28.02.2020*
06.01.2025	Corporate Debtor requested for a one-time settlement of the loan	*Reacknowledged the debt again.*
28.02.2025	Indian Bank assigned the loan account to the Petitioner	
28.10.2025	Petitioner filed the present company petition	

8.4 He Applicant has given a tabular representation of the number of loan accounts of the CD maintained with Indian Bank, their payment and due date details as below:

AC No.	First Date of disbursal	Original NPA date	Due date post restructuring	90 days default of restructured terms	Reversal of accrued interest upon default of restructured terms	Classification of NPA retrospectively
6722552119	06.02.2019	28.02.2020	01.09.2020	30.09.2021	04.12.2021	28.02.2020
6131889241	28.02.2019	28.02.2020	01.09.2020	30.09.2021	04.12.2021	28.02.2020
6952784635	27.11.2020	-	27.11.2021	-	04.12.2021	28.02.2020

8.5 The Applicant relies on the following judgments:

i. 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 it was held that:

ii. Hon'ble Supreme Court in B. Prashanth Hegde v. State Bank of India and Anr. in Civil Appeal No. 477 of 2022

iii. Hon'ble NCLAT in Raghavendra Joshi v. Axis Bank Ltd.& Anr. in Company Appeal (AT) Insolvency No. 914 of 2023

iv. Hon'ble NCLAT in Puneet P. Bhatia v ASREC India Ltd. in Company Appeal (AT) (Ins.) No. 139 of 2024

9. <u>WRITTEN SUBMISSIONS OF CORPORATE DEBTOR</u>

9.1 The CD has relied on the following judgments:

i. Hon’ble Supreme Court in Shri Swami Samarth Construction & Finance Solution v. Board of Directors of NKGSB Co-Op. Bank Ltd. [2025 SCC OnLine SC 1566]

ii. Hon’ble Supreme Court in Hongkong & Shanghai Banking Corpn. Ltd. v. Awaz, [(2025) 3 SCC 52]

10. ANALYSIS AND FINDINGS

10.1 We have heard the Ld. Counsels for the Applicant and the CD and have perused the records as placed before us. Our findings in the matter are as under: -

10.2 As the contentions of the IA are similar to that of the Reply filed by the CD in the main Petition, we will be dealing with the main Petition for the sake of brevity and to avoid repetition, and a single order shall be passed in both IA and CP.

10.3 The primary issues which arise for consideration are:

i. Whether a financial debt exists and is due and payable by the Corporate Debtor to the Financial Creditor;

ii. Objection regarding contradicting dates of default

iii. Whether the Application is barred by Section 10A of the Code;

iv. Whether the pendency of proceedings under Section 95 of the Code against the Personal Guarantors and the interim moratorium under Section 96 bars or stays the present proceedings under Section 7;

v. Whether the alleged non-compliance with RBI/MSME revival guidelines renders the present Application non-maintainable; and

vi. Whether pendency of proceedings before DRT/SARFAESI proceedings affects maintainability of the present Application.

Existence of Financial Debt and Default

10.4 On perusal of the records it is evident that the credit facilities were originally granted by State Bank of India and DHFL and subsequently taken over by Indian Bank. The facilities were secured by mortgage of various immovable properties of the CD. The debt was thereafter assigned in favour of the present Financial Creditor by way of Assignment Agreement dated 28.02.2025.

10.5 The CD has not disputed availing of the financial facilities, execution of security documents, mortgage creation, restructuring of the facilities, or the subsequent assignment in favour of the Applicant. The principal defence is not regarding existence of debt but regarding the date of default and maintainability of the proceedings.

10.6 The Applicant has placed on record loan documents, restructuring documents, mortgage documents, assignment agreement, OTS proposal dated 21.01.2022 issued by the CD and the NeSL record of default in Form-D. The OTS proposal issued by the CD itself constitutes a clear acknowledgment of liability and outstanding dues.

Objection regarding Contradictory Date of Default

10.7 The CD has contended that different dates of default have been reflected in SARFAESI notices, Section 95 proceedings and the present proceedings and therefore the Applicant/Financial Creditor has failed to establish default. We are unable to accept the said contention. The Applicant has explained that the date reflected in proceedings against Personal Guarantors pertains to invocation of guarantees and consequent liability of guarantors, whereas the present proceedings concern the default committed by the CD in servicing the underlying financial facilities. Merely because different proceedings may refer to different trigger events for different obligors, it cannot be concluded that the underlying default itself ceases to exist. What is relevant under Section 7 is whether default has occurred and not whether the same date is repeated identically across all recovery proceedings. Further, relying on the Hon'ble Supreme Court in ***Dena Bank***

***(Now Bank of Baroda) v. C. Shivakumar Reddy*, (2021) 10 SCC 330,** the Hon'ble Court has held that acknowledgment of liability, restructuring proposals and OTS proposals constitute evidence of subsisting liability and default. The restructuring arrangement dated 04.03.2020 itself demonstrates that the account had already become stressed and required restructuring. Further, the subsequent OTS proposal issued by the CD unequivocally acknowledges the debt.

<u>Contention regarding Section 10A</u>

10.8 The principal defence of the CD is that the alleged default falls within the period covered under Section 10A of the Code and consequently no application under Section 7 can be maintained. The CD submits that after restructuring of the loan facilities on 04.03.2020, the repayment obligations commenced from 01.09.2020 and therefore any default, if at all, would have arisen during the Covid-19 protected period. We have carefully considered the chronology placed on record by the Applicant. The documents reveal that the original loan facilities were disbursed on 06.02.2019 and 28.02.2019. The account first became overdue on 30.11.2019 when the CD failed to honour its repayment obligations. The said default continued beyond 90 days, thereby rendering the account eligible for classification as NPA in terms of RBI guidelines.

10.9 It is an admitted position that prior to declaration of NPA, the CD itself approached Indian Bank *vide* letter dated 24.02.2020 seeking restructuring of the loan facilities. The restructuring proposal was approved on 04.03.2020. Thus, the restructuring itself evidences the existence of financial stress and prior default in the account.

10.10 The Applicant has explained that although the account was restructured, RBI guidelines governing restructured accounts mandate that in case the borrower fails to comply with the revised repayment schedule, the account is required to be classified as NPA from the original date on which the account had first become irregular. The tabular statement filed by the Applicant demonstrates that the restructured term loan accounts became overdue for more than ninety days on 30.09.2021. Consequently, on 04.12.2021, the accrued interest was reversed and the accounts were classified as NPA retrospectively with effect from 28.02.2020 in accordance with applicable RBI norms governing restructured accounts.

10.11 The Applicant has relied on the judgments of Hon'ble Supreme Court in *Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. & Ors.*, Civil Appeal No. 2211 of 2024 and *B. Prashanth Hegde v. State Bank of India & Anr.*, Civil Appeal No. 477 of 2022 and Hon'ble NCLAT in *Raghavendra Joshi v. Axis Bank Ltd. & Anr.*, Company Appeal (AT) (Insolvency) No. 914 of 2023, wherein the Hon'ble Courts have interpreted that restructuring of a loan account does not obliterate the original default and that the Adjudicating Authority is required to examine the real nature and origin of the default rather than merely the subsequent restructuring arrangements and also held that where the account had already become irregular and the restructuring was merely a measure to regularise the account, the original default would continue to remain relevant for determining the applicability of Section 10A. Relevant paras of the above judgments are reproduced hereunder:

***Hon'ble Supreme Court in Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. & Ors.*, Civil Appeal No. 2211 of 2024**

"25. Firstly, we take up the issue with regard to admission of the Section 7 application. In our considered view, the plea of bar under Section 10A, IBC is a non-starter. In the backdrop of outbreak of COVID-19 pandemic, as an ameliorative measure, Section 10A was incorporated in the IBC. The provision barred initiation of CIRP against a corporate debtor in the event the default arose on or after 25.03.2020, for a period of 6 months or

such period not exceeding one year as may be notified. It may be noted that by notification the government extended the embargo till 24.03.2021.[25] *Explanation to the Section, however, clarified that the bar will not apply to any default committed before 25.03.2020.*

26. *In the Section 7 application, 2nd Respondent's case is that the Corporate Debtor had defaulted under the common loan agreement dated 19.06.2013 on 31.03.2018, much prior to the commencement of the Section 10A bar. Controverting this stance, Appellant would argue that the common loan agreement had been subsequently restructured* vide *the 1st restructuring proposal dated 21.02.2020, whereby the first instalment became payable on 31.12.2020, attracting the prohibition under Section 10A. This argument is wholly misconceived. Even if the Appellant's case is assumed that the 1st restructuring plan had been accepted, the same was subsumed in the 2nd restructuring plan dated 29.09.2020 whereby the first instalment fell due on 31.03.2021, beyond the Section 10A period which operated from 25.03.2020 to 24.03.2021.*

27. *That apart, we are in wholesome agreement with the NCLAT's finding that the restructuring proposals had not fructified into valid agreements novating the original contract.*

……

These pre-conditions had not been complied with and even the subsequent tariff order dated 31.05.2021 did not provide adequate leverage to persuade the lenders to accept the restructuring proposals in their meeting convened on 11.11.2021 pursuant to High Court's direction vide order dated 07.10.2021. In such view of the matter, the date of default would relate to 31.03.2018 as per the Section 7 application, and the proceeding cannot be held to be barred in light of the Explanation to Section 10A, IBC.

***Hon'ble Supreme Court in B. Prashanth Hegde v. State Bank of India & Anr.*, Civil Appeal No. 477 of 2022**

*"**40.** In our view, a conjoint reading of sub-sections (1), (2) and (5) of Section 7 makes it clear that an application under Section 7 of a financial creditor for initiating CIRP of CD hinges on a default on part of CD of financial debt of an amount exceeding the specified threshold. The Form prescribed for making the application* inter alia *serves the purpose of bringing out the necessary ingredients for presentation of an application under Section 7(1) of IBC. The purpose of providing the date of default is to show that the debt is due and payable i.e., it has not become time barred. Therefore, in our view, if the application*

is substantially in conformity with the prescribed Form and discloses the necessary ingredients for making an application under sub-section (1) of Section 7 and provides the relevant materials/ information to substantiate those ingredients, the purpose of adhering to the Form is served, and such application is not liable to be rejected under clause (b) of sub-section (5) of Section 7 of IBC on the ground of any insignificant omission or error in the application. The aforesaid view finds support from use of the expression 'may' before 'reject' in Section 7(5)(b) of IBC. This means that if the Adjudicating Authority is satisfied from the materials placed before it in the application that all the necessary ingredients are satisfied for presentation of an application under Section 7(1) of IBC, it may not reject the application for an insignificant omission or non adherence to the Form.

*50**.** At this stage, we shall deal with another submission made on behalf of the appellant. According to the appellant, NCLAT had observed that NPA date in respect of credit facilities extended by SBI was shifted to the year 2010 as per RBI master circular dated 01.07.2013, therefore, if the date of NPA falls in the year 2010, the acknowledgement in the balance sheet(s) made on 30.09.2015 would be beyond the period of three years. Consequently, it would not extend the limitation period. The aforesaid submission is out of context. NCLAT had not observed that the date of default would fall in the year 2010. Rather, NCLAT referred to the master circular of RBI to indicate that the shifting of NPA date to the year 2010 was merely for bank's asset classification. In our view, how a bank classifies its debt for managing its balance sheet is not a factor determining the starting point of limitation more so, when the debt is restructured and is acknowledged in fresh working capital consortium agreements entered for availing credit facilities. What is relevant is that by virtue of execution of these working capital consortium agreements the banks got a fresh lease of life for their dues and based on those agreements, new NPA date(s) became relevant as starting point for computing limitation."*

Hon'ble NCLAT, Principal Bench in *Raghavendra Joshi v. Axis Bank Ltd. & Anr.*, Company Appeal (AT) (Insolvency) No. 914 of 2023

*"**10.** Section 10A never intended to cover the default which is continuing before Section 10A period. The present is a case where admittedly default has been committed by the Corporate Debtor since 2016. Admittedly NPA was declared on 19th July, 2016. Learned Counsel for the Respondent has rightly referred to acknowledgement made by the Corporate Debtor in its balance sheets for the financial year 2018-19, 2019-20 and 2020-*

21 where the dues were clearly acknowledged. Thus, the present is the case where default was committed prior to commencement of Section 10A period."

10.12 The subsequent sanction of GECL Covid-19 loan on 23.11.2020 also does not establish absence of default. The grant of additional financial assistance under special regulatory measures cannot, by itself, erase the existing liability or alter the original date of default.

Effect of Section 95 Proceedings and Interim Moratorium under Section 96

10.13 The objection of the CD is that the Applicant has already initiated proceedings under Section 95 of the Code against the Personal Guarantors and therefore, by virtue of Section 96, the present Section 7 proceedings must remain stayed.

10.14 A plain and purposive reading of Section 96 of the IBC makes it clear that the interim moratorium is triggered upon the filing of an application under Section 95 and is operative in relation to the personal guarantor against whom such application is instituted.

> "*96. Interim- moratorium. - (1) When an application is filed under section 94 or section 95 – i. an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and…"*

10.15 The statutory language does not display any legislative intent to extend the scope of such moratorium to the CD or to any other entity not subject to proceedings under Part III of the IBC (Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms). The protection under Section 96 is thus clearly circumscribed and confined to the individual debtor, namely the personal guarantor. The scheme of the IBC further protects this interpretation. The IBC delineates two distinct insolvency frameworks — one governing corporate person under Part II and the other governing individuals and partnership firms under Part III. These systems, though interconnected, are designed to operate independently within their respective domains. In the absence of an express statutory bar, the initiation of proceedings under one part cannot be construed to inhibit proceedings under the other. The construction sought to be advanced by the Applicant would amount to mixing these distinct statutory mechanisms, thereby undermining the efficiency of the IBC.

10.16 Further, it is also pertinent to note the recent legislative development brought about by the insertion of sub-section (4) to Section 96 by way of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, namely: -

> ***Section 96(4): Interim-moratorium: "The provisions of this section shall not apply where an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor."***

10.17 The said provision further clarifies the scope and ambit of the interim moratorium and reinforces the position that such moratorium is not intended to operate as a blanket prohibition against all proceedings in relation to the debt, but is confined in its application in accordance with the scheme of the IBC. The insertion of Section 96(4) thus lends additional statutory support to the interpretation that the moratorium is person-specific and does not extend to proceedings against the Corporate Debtor under Part II of the IBC.

10.18 In this regard, we place reliance on the recent judgment of the Hon'ble High Court of Bombay in ***IL & FS Financial Services Ltd. v/s Serveall Constructions Pvt. Ltd. and Ors., (2026) ibclaw.in 2132 HC*** (06.04.2026) wherein it has been authoritatively held that the interim moratorium imposed under Section 96 in proceedings against personal guarantors does not extend to the principal borrower. The Hon'ble High Court has unequivocally clarified that proceedings against the principal borrower are not interdicted by such moratorium and may continue independently. The relevant extract of the said judgement is reiterated as under:

> *"46. Hence, in the present case, the interim moratorium imposed under Section 96 of the IB Code in the IRP proceedings initiated for defendants nos. 3 and 4, who are personal guarantors in the present suit, would not apply to defendant no. 1, who is the principal borrower in the present suit against whom no proceedings have been initiated under the IB Code. Hence, this suit shall remain stayed only against defendants nos. 2 to 4 until the respective moratorium orders are operative."*

10.19 A similar exposition of law is found in the decision of our Ld. Coordinate Bench at NCLT Kochi, in ***Furnace Fabrica (India) Limited v. State Bank of India IA(IBC)339/KOB/2023 in CP(IBC)/14/KOB/2023*** (01.11.2023), wherein it has been held that the moratorium under Sections 96 and 101 of the IBC cannot be construed so as to bar proceedings under Sections 7, 9 or 10 against a corporate debtor. The Tribunal has further observed that the expression "in relation to debt" must receive a contextual and harmonious interpretation, consistent with the overall scheme of the IBC, and cannot be extended to defeat the enforceability of contractual rights arising under loan and guarantee arrangements. In the said Order Ld. NCLT Kochi observed the following:

> *"6. On the conjoint reading of the provisions of the code, in line with the judgements referred above, we are of opinion that the moratorium under section 96 and 101 of the code cannot be meant to prohibit the right to action under section 7 or 9 or 10 of IBC which lie against a company or body corporate and not against an individual as under PIRP. It is our view that the word 'in relation to debt' should be read in harmony with the other parts of the code and after giving due importance to the purpose and terms of a contract of guarantee and loan agreements. Hence, we deem it fit that no stay can be granted in this matter."*

10.20 The judgment relied by the parties, of Hon'ble Supreme Court in **State Bank of India v. V. Ramakrishnan & Anr., (2018) 17 SCC 394**, held that liability of principal borrower and guarantor is co-extensive and proceedings against one do not extinguish remedies against the other. Further, the Hon'ble NCLAT in **Bhavesh Gandhi v. Central Bank of India, Company Appeal (AT)(Ins.) No. 923 of 2022**, clarified that Section 96 restricts multiplicity of proceedings against the same personal guarantor and does not create a blanket embargo against proceedings against independent debtors. This Bench also finds merit in the Applicant's contention that the decision in **Tata Capital Ltd. v. Geeta Passi, 2024 SCC OnLine Bom 1897**, arose in the context of a proprietorship concern, which lacks an independent legal identity separate from its proprietor. The ratio of the said judgment cannot be mechanically extended to a corporate debtor incorporated under the Companies Act.

10.21 The Insolvency Law Committee Report dated 20.02.2020 has also clarified that the legislative intent was not to stay proceedings against third parties merely because proceedings have been initiated against a guarantor. We therefore hold that initiation of proceedings under Section 95 against Personal Guarantors does not create any legal bar to continuation of proceedings under Section 7 against the Corporate Debtor.

10.22 The judgement of *Dilip B Jiwrajika Vs Union Bank of India [2023 SCC OnLine SC1530]* relied upon by the CD does not apply to this matter as interim Moratorium under section 96 does not apply to the debt of Principal Borrower as has been dealt above in the matter of IL&FS Financial Services (supra). Further, the Supreme Court in Dilip B Jiwarjika (supra) has never dealt with the issue of that interim moratorium under section 96 applies to principal borrower. However, this interim moratorium applies only to debts of personal Guarantors and not to the debts of principal borrower.

MSME Framework and RBI Guidelines

10.23 The CD has further contended that being an MSME entity, the lender ought to have followed the Framework for Revival and Rehabilitation of MSMEs before initiating recovery proceedings. The record reveals that restructuring was in fact granted to the CD pursuant to its request. The restructuring package was implemented and additional facilities, including GECL assistance, were also sanctioned. Thus, it cannot be said that the lender completely ignored the applicable framework. On the contrary, opportunities for restructuring and rehabilitation were admittedly extended. Even otherwise, issues concerning compliance with RBI guidelines, restructuring norms, classification of accounts or alleged irregularities in recovery measures are matters falling within the domain of the competent recovery forums and do not negate the existence of debt and default under Section 7 of the Code.

10.24 The CD relies on the judgment of Hon'ble Supreme Court in *Pro Knits v. Board of Directors of Canara Bank* [2024 SCC Online SC 1864] for compliance of RBI guidelines dated 17.03.2015, as mandated by the Hon'ble Supreme Court. We are of the view that the facts of the present case demonstrate substantial compliance with the restructuring mechanism, and in any event, the existence of financial debt and occurrence of default remain undisputedly established from the material on record. Hence, the said judgment is misplaced by the CD.

10.25 The CD has relied on the judgments of Hon'ble Supreme Court in *Shri Swami Samarth Construction & Finance Solution v. Board of Directors of NKGSB Co-Op. Bank Ltd.* [2025 SCC OnLine SC 1566] and *Hongkong & Shanghai Banking Corpn. Ltd. v. Awaz*, [(2025) 3 SCC 52], stating that the bank is mandatorily bound to look into claim of MSME and keep further action in abeyance. Further, the RBI Master Circulars are an extension of the statute.

10.26 To deal with the above judgments, this Tribunal places reliance on Section 238 of the Code which is reproduced as under:

> ***"Section 238: Provisions of this Code to override other laws.***
>
> ***238.** *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

10.27 The NPA classification is essentially a regulatory and system-driven exercise undertaken for asset classification and provisioning under the RBI norms. Even assuming that there was any procedural irregularity in the process of NPA classification or compliance with the MSME Framework, the same would not extinguish the admitted financial debt or the independently established default under the Code. The CD has also failed to place on record any approved restructuring package or binding Corrective Action Plan altering its repayment obligations. Further, by virtue of Section 238 of the Insolvency and Bankruptcy Code, the provisions of the Code have an overriding effect over any inconsistent law or instrument. Therefore, once the Financial Creditor establishes the existence of financial debt and default in accordance with the requirements of the Code, the alleged procedural non-compliance with the RBI guidelines or MSME Framework, by itself, cannot defeat a petition under Section 7. The ratio laid down in Pro Knits is distinguishable on facts and does not create an absolute bar to initiation of CIRP where debt and default otherwise stand proved. Accordingly, this Tribunal finds no merit in the aforesaid objection raised by the CD and the same is liable to be rejected.

Pendency of DRT and SARFAESI Proceedings

10.28 The contention of the CD that proceedings are pending before DRT cannot be sustainable as it is settled law that remedies under the Code are independent and concurrent with remedies under SARFAESI Act and the Recovery of Debts and Bankruptcy Act.

10.29 The Applicant has placed on record certificates under Section 2A(a) (b) and (c) of the Bankers Book Evidence Act, 1891 certifying that the accounts of the CD are maintained by the Indian Bank.

10.30 The Applicant has placed on record the NeSL record of default in Form D in rejoinder, which reflects the Status of Authentication of default as 'Deemed to be Authenticated' and the total outstanding amount as Rs.31,77,21,282.13/- and date of default as 30.11.2019.

10.31 The date of default is mentioned as 30.11.2019, which is 90 days prior to the declaration of the account as NPA on 28.02.2020. The Applicant has filed the Application on 27.10.2025. In our view, placing reliance on the judgment of Hon'ble Supreme Court in Re: Cognizance for Extension of Limitation, Suo Motu Writ Petition (Civil) No. 3 of 2020 and OTS/restructuring proposals given by the CD on 21.01.2022 and 06.01.2025 which result into acknowledgment of debt, we find that the Application filed by the Applicant is within limitation period.

10.32 Further, this Tribunal places reliance on the judgment of ***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 decided on 18.02.2026]*** wherein Hon'ble Supreme Court while examining the validity of the admission of the Corporate Debtor to CIRP, has laid down as under: -

"B. Validity of CIRP Admission

28. The other aspect on which the Appellant has heavily relied is the acceptance of various sums of money paid by the Corporate Debtor purportedly under the 1st and 2nd restructuring proposals, which according to them amounts to deemed approval of such proposal. As discussed earlier, such argument flies in the face of the fact that the 2nd Respondent had resolutely maintained and rightly so, that the restructuring proposals were underpinned on pre-implementation conditions which the Corporate Debtor had failed to fulfil. Under such circumstances, receipt of various sums of money would not amount to acceptance of the restructuring proposals, thereby novating the earlier loan agreement. Neither would such part payments constitute full satisfaction of the existing debt so as to render the Section 7 application inadmissible.

29. It has also been vociferously contended that the Corporate Debtor is an ongoing concern and does not lack the ability to repay the debt. It has a subsisting PPA for 25 years with WBSEDCL, and has raised bills of Rs. 906 crore from 01.11.2024 to 31.03.2025. It also has a continuous fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI scheme and had earned EBIDTA of Rs. 20 crore per month during the CIRP. These facts though attractive at first blush, do not yield either legal or factual justification to rebut the admission of the Section 7 application.

30. On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. <u>The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.</u> Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. "Financial creditor" is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned.26 A "financial debt" means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.27 "Operational creditor" is defined as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned.28 "Operational debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central or State government, or any local authority.29 31. In Swiss Ribbons (P) Ltd. v. Union of India [(2019) ibclaw.in 03 SC],30 such classification of creditors as financial creditors and operational creditors has been held to be constitutionally valid. The Bench underscored the essential differences between a financial creditor and operational creditor and held that financial creditors were mostly secured creditors like banks and financial institutions who extended finance to enable a corporate debtor to set up and/or operate its business. Such *credit is extended to a corporate debtor under well-defined loan agreements having specified repayment schedules and reserving rights to recall the loan in case of default or restructure the same enabling a corporate debtor to tide over unforeseen financial stress. On the contrary, operational creditors are mostly unsecured creditors and their claims are relatable to supply of goods and services in the operation of the business. Ordinarily, operational debts are not based on admitted documents and the possibility of genuine disputes with regard to such debts is much higher compared to financial debts.*

32. In light of such classification, the Code makes a distinction in the manner in which an insolvency process may be initiated by a financial creditor under Section 7, IBC in contradistinction to an operational creditor under Section 8 and 9, IBC. Unlike an operational creditor, a financial creditor may trigger an insolvency process under Section 7 in respect of default of any financial debt, whether owed to itself or to any other financial creditor. While the financial creditor may directly file an application under Section 7 setting out the particulars of the financial debt and evidence of default, the operational creditor, on the occurrence of a default, is to first deliver a demand notice of the unpaid debt to a corporate debtor and the latter may within 10 days of receipt of such demand notice bring to the notice of the operational creditor the existence of a dispute or record the pendency of a pre-existing suit or arbitration proceeding in respect of such debt. Once a corporate debtor demonstrates a dispute regarding the existence of the debt, the insolvency process stands aborted vis-à-vis the operational creditor. <u>But when the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor which has been succinctly summed up in Innoventive (supra):</u>

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

33. Reiterating the ratio in Innoventive (supra), this Court in ES Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd. [(2021) ibclaw.in 173 SC]32 held as follows: "34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. <u>The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an</u>

application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."

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

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

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

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

……………………………………………………………………

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

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

"6. The elucidation in para 90 and other paragraphs [of the judgment under review] were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of

statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."

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

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

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

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

(emphasis wherever required supplied)

10.33 To summarize the above judgment, we observe as under:

a. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process must be initiated. Section 3(12) defines "default" as non-payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.

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

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

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

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

10.34 The Applicant has proposed the name of Mr. Anil Kohli to act as the Interim Resolution Professional (IRP) and has given his declaration in Form 2, *inter alia*, stating that no disciplinary proceeding is pending against him. The AFA in Form B of the IRP on record is valid till 30.06.2026. On perusal of the IBBI website it is observed that the AFA of the proposed IRP is valid till 30.06.2027.

10.35 Thus, it is clear from perusal of the record that an amount more than the threshold limit of Rs.1 Crore under Section 4 of the Code was due and payable by the CD to the Applicant. Hence, we find that the Applicant has been able to substantiate the existence of a financial debt due and payable by the CD, which remained unpaid. The debt so owed by the CD to the Applicant falls within the definition of “financial debt” under Section 5(8) of the Code.

10.36 In view of the above, we find that requisite conditions necessary to trigger CIRP in respect of the CD are fulfilled, the Application is complete as all the relevant documents have been attached by the Applicant along with the Application. As a result, the matter deserves to be admitted under Section 7 of the Code.

10.37 At this stage we are not quantifying the exact amount under default, which the IRP will do. We are satisfied that there exists a debt which is in default in excess of Rs. 1 Crore.

ORDER

In view of the aforesaid findings, Application bearing I.A (I.B.C)/637(MB)2026 is hereby **dismissed** and C.P.(IB) No.1154/MB/2025 filed under Section 7 of the Code by ASREC India Limited, the Applicant, for initiating CIRP in respect of **Landmark Motels and Travels Pvt. Ltd**, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of the Code 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 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 Securitisation 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 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 Code 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 in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. Anil Kohli** a registered Insolvency Professional having Registration Number **IBBI/IPA-001/IP-P00112/2017-2018/10219** and e-mail address insolvency@arck.in having valid Authorisation for Assignment up to 30.06.2027 as the IRP to carry out the functions under the Code.

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 Code. The officers and managers of the Corporate Debtor are directed to provide effective 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 Code read with Rule 11 of the NCLT Rules for any violation of law.

VIII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Applicant is directed to deposit a sum of Rs.3,00,000/- (Rupees Three Lakh) 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 Applicant on priority upon the funds 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.

IX. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

X. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail.

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 Applicant, 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/-	**Sd/-**
NILESH SHARMA	**SAMEER KAKAR**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

//VM//