



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.143/ALD/2024

(An application filed 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:

M/s Bakliwal Vyapaar Pvt. Ltd.

Through its Director, Mr. Mahesh Kumar Gupta

Registered Office- C/O kifta, 203, Sarat Bose Road, 3rd Floor, NR Canara Bank Building Kolkata, Kolkata, West Bengal, India-700029

.....Financial Creditor

Versus

M/s Sibri Traders Pvt. Ltd.

Through its Director

Registered office address: 16/19-C, Civil Lines,
Kanpur, Uttar Pradesh, India- 208001.

.....Corporate Debtor

Order pronounced on: 24.04.2025

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances:

Sh. Mukesh Singh Bhadauria, PCMA : *For the Financial Creditor*

Sh. Vipin Kumar Kushwaha, Adv. : *For the Corporate Debtor*

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ORDER

1. This Application has been filed on 17.10.2024 by the M/s Bakliwal Vyapar Private Limited as the Applicant/Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “IBC”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against M/s Sibri Traders Private Limited (hereinafter referred as “Respondent/Corporate Debtor) in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs. 2,06,96,803/-, including the interest at 15%, in default, declaring date of default being 05.05.2024.
2. It is stated in Part-IV of the Application that the Corporate Debtor availed a loan facility amounting to Rs. 1,50,00,000 pursuant to an Inter-Company Loan Agreement dated 06.05.2022 executed between the parties. The said loan facility was granted for a period of 24 months, commencing from the date of first disbursement and terminating on 05.05.2024. Further, as per the terms of the agreement, the Corporate Debtor is liable to pay interest at the rate of 15% per annum, payable yearly, on the outstanding loan amount.

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3. As per the Loan Agreement dated 06.05.2022, the Corporate Debtor agreed to repay the principal loan amount along with the accrued interest and other dues promptly on the maturity date of the loan, i.e., 05.05.2024. It was further agreed in the said agreement that in the event of any default in repayment of the loan amount, the Corporate Debtor shall be liable to pay additional penal interest at the rate of 3% per annum.
4. The details of the disbursement of the loan facility granted to the Financial Creditor by the Corporate Debtor, are as follows:

S. No.	Date of Payment	Amount (In Rs.)
1	07.05.2022	56,00,000
2	07.05.2022	60,00,000
3	20.07.2022	19,00,000
4	30.08.2022	13,00,000
	Total	1,48,00,000

5. Pursuant to the disbursement, the Applicant submits that the Corporate Debtor defaulted in making payment of the amount as stated above on the agreed termination date of the loan, i.e., 05.05.2024. In view of the said default, the Applicant issued a loan recall notice dated 05.07.2024. However, no payment was received from the Corporate Debtor pursuant to the said notice.

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6. Aggrieved by the persistent default, the Applicant filed the present application.

REPLY ON BEHALF OF THE CORPORATE DEBTOR

7. In response to the aforesaid application, the Corporate Debtor has filed a reply vide diary no. 251 dated 10.02.2025, wherein the Corporate Debtor has denied the submissions made by the Applicant in the present application.
8. The Corporate Debtor submits that it is currently facing a financial crunch due to various factors and remains hopeful of arranging the necessary funds to make payment of the debt due to the Financial Creditor/Applicant. The Corporate Debtor places reliance on its email dated 27.07.2024, wherein it requested a period of 15 days for repayment of the loan amount and also urged the Applicant not to initiate any legal proceedings, citing ongoing efforts to arrange the required funds.
9. The Corporate Debtor admits that it is undergoing a severe financial crisis, and submits that the initiation of CIRP proceedings would adversely affect its operations as well as the interests of people who are dependent on it. In support of this contention, the Corporate Debtor

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places reliance on the judgment passed by the Hon'ble Supreme Court in *Vidarbha Industries Power Limited v. Axis Bank Limited* (Civil Appeal No. 4633 of 2021).

10. The Corporate Debtor admits the submissions of the Applicant with respect to the sanctioned loan amount and the loan tenure of 24 months.
11. The Corporate Debtor, however, contends that the present application has been filed with mala fide intent, and alleges that the Applicant is seeking to misuse the provisions of IBC using this Tribunal as a recovery forum. On this basis, the Corporate Debtor submits that the present application is liable to be dismissed.

REJOINDER FILED BY THE APPLICANT

12. The Applicant filed its rejoinder on 27.03.2025, denying and countering all the contentions raised by the Corporate Debtor, on the following grounds:
 - a. The Applicant submits that the reply filed by the Respondent fails to address the core issue raised in the present Petition under Section 7 of the Code. The Corporate Debtor has defaulted in repaying the loan amount disbursed by them, along with the applicable interest and other dues. In view of the said default, a loan recall notice was

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duly issued by them. However, no payment has been received from the Corporate Debtor to date.

- b. The Applicant submits that the averments made in the reply filed by the Respondent clearly amounts to an admission of default. The Respondent, in Para 7 of its reply, has taken the plea of "financial crunch" and further expressed a mere hope of arranging funds to repay the debt due to the Financial Creditor. In light of the admitted default and the failure to repay the debt, the application filed by the Applicant under Section 7 of the Code deserves to be admitted.
- c. The Applicant further asserts that the present application is filed in compliance with the provisions of the Code, hence should be admitted as the Corporate Debtor has defaulted in paying the amount disbursed as a loan along with the applicable interest in terms of the loan agreement dated 06.05.2022.
- d. The applicant submits that the judgment of the Hon'ble Supreme Court in *Vidarbha Industries Power Limited v. Axis Bank Limited* (Civil Appeal No. 4633 of 2021), relied upon by the Respondent/Corporate Debtor, is not applicable to the facts and circumstances of the present case. The Applicant places reliance on the judgments of the Hon'ble Supreme Court in *Mr. Suresh Kumar Reddy v. Canara Bank & Ors.* (Civil Appeal No. 7121 of 2022), *Innoventive Industries Limited v. ICICI Bank* (Civil Appeal Nos. 8337-8338 OF 2017), and *E.S. Krishnamurthy & Ors. v. Bharath Hi Tech Builders Private Limited* (Civil Appeal No. 3325 of 2020), wherein the scope of Section 7 of the Insolvency and Bankruptcy Code, 2016 was laid down. It has been consistently held that once

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the Adjudicating Authority is satisfied that a debt exists and a default has occurred, it is bound to admit the petition under Section 7 of the Code.

- e. The Applicant further submits that the Hon'ble Apex Court in the Review Petition of Vidarbha (supra) clarified that the decision in Vidarbha was subject to a specific set of facts. Therefore, the decision in Vidarbha (supra) cannot be read and understood as taking a view that is contrary to the view taken in Innoventive Industries (supra) and E.S Krishnamurthy (supra).

FINDING AND ORDER

13. We have heard the Ld. Counsel for the Applicant as well as the Respondent and perused the records, exhibits/annexures, and after considering arguments advanced by respective Learned Advocates, the main issue which are before us to be decided in respect of the present Application u/s 7 are:

- i. Whether there is debt and default within the meaning of the I &B Code, 2016.

14. With regard to the above issue, it is stated that the Corporate Debtor, in need of urgent funds for expansion of its business, has executed an Inter-Company loan agreement dated 06.05.2022 with the Applicant for availing of a loan facility of Rs. 1,50,00,000/-. In accordance with terms of the Agreement the following disbursement was carried out:

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S. No.	Date of Payment	Amount (In Rs.)
1	07.05.2022	56,00,000
2	07.05.2022	60,00,000
3	20.07.2022	19,00,000
4	30.08.2022	13,00,000
	Total	1,48,00,000

15. In view of the above-mentioned disbursement of the loan, it is pertinent to examine the terms and conditions of the Loan Agreement executed between the parties on 06.05.2022, particularly those governing the repayment process for the loan granted. The obligations of the Corporate Debtor under the said agreement are as follows: -

- i. Clause 1 of the said agreement stipulates that the amount of Rs. 1.50 crore shall be provided for a period of 24 months, commencing from the date of first disbursement and terminating on 05.05.2024.
- ii. Clause 5 of the said agreement provides that the parties have mutually decided that the tenure of the agreement shall not exceed 24 months. Hence, all the advances shall be charged at an interest rate of 15% from the date of disbursement till the end of the tenure of this agreement.
- iii. Clause 7 of the Agreement specifies that the loan, along with interest and other dues, shall be repaid in full on the date of maturity of the loan, i.e., 05.05.2024.
- iv. Clause 8 of the Agreement specifies that if the borrower fails to pay the principal amount along with the interest accrued

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thereon, an additional interest would be charged at 3% per annum over and above the agreed interest till the date of payment.

- v. Clause 9 of the Agreement provides that the borrower shall not have the liberty to make any payment before the expiry of the termination date, i.e., 05.05.2024.
- vi. Clause 10 of the agreement stipulates that the borrower shall be entitled to a moratorium period commencing from the date of disbursement of the loan funds till the expiry of the tenure of the agreement, during which neither the principal amount nor any interest shall be due or payable.

16. It is observed that in line with the terms of the loan agreement dated 06.05.2022, the Applicant disbursed the agreed amount from 07.05.2022 till 30.08.2022. However, no repayment was made by the Corporate Debtor as on the termination date of the Agreement, i.e., 05.05.2024. Consequently, a loan recall letter dated 05.07.2024 was issued by the Applicant to the Corporate Debtor, calling upon it to repay the outstanding dues within two days. Despite such notice, no payment was received.

17. It is also observed that a final intimation was also sent to the Corporate through a reminder email dated 30.08.2024. The said email also states that the Corporate Debtor, vide an email dated 27.07.2024, had

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requested an extension of 15 days for the payment of the whole amount. However, even after the extension provided to the Corporate Debtor, no payment was received. The relevant excerpts of the email dated 27.07.2024 are as follows:

“Sat, Jul 27, 2024 at 12:23 PM

Respected Sir,

In reference to your Notice dated 06th of July, 2024 received by us, we hereby request before your goodself to provide us a period of 15 more days to arrange the funds for making payment of Loan amounting Rs.1,48,00,000/- (Rupees One Crore Forty-Eight Lakhs only) along with the applicable Interest.

We will appreciate for consideration of our above request.

we hope that our past relations shall definitely assure your goodself to provide us the above requested time period to make the said repayment. Further, we shall also try to meet you in person to discuss the said matter at priority.

Thanks and regards

For Sibri Traders Private Limited

(Rahul Sachan)

Director”

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18. It has also been observed from the reply of the Corporate Debtor filed before this Tribunal that due to a financial crunch, the Corporate Debtor is unable to clear the outstanding dues of the Applicant. The relevant excerpts of the reply of the Corporate Debtor filed on 24.01.2025 are reproduced below:

“7. That the deponent states that the corporate debtor is facing financial crunch owing to various factors and the company is very hopeful that the Company shall be able to arrange funds and that will be sufficient to make payment of the debt due to the financial creditor. The deponent had even stated the fact in an email sent to the applicant company dated 27.07.2024 where it was requested to grant some time to repay the loan amount of the applicant company. Copy of email dated 27.07.2024 is annexed herewith as Annexure No.2

8. That the deponent states that the Management of the Respondent have been devoting full time exclusively for management and business of the Respondent company. The business of the Respondent company is managed with full passion and dedication. In spite of this, the Corporate Debtor is facing tough financial crisis. This Hon'ble Tribunal may consider the impact of CIRP on the Respondent and the people who are depending on it.”

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19. It is to be noted that during the hearing of the matter on 28.03.2024, the Ld. Counsel of the Respondent has submitted that the Corporate Debtor has been running into financial constraints as a result of which, it was not in a position to pay the debt.
20. The default on the part of the Corporate Debtor is also evident from the NeSL records submitted by the Applicant as on 13.08.2024, showing that there is a default committed by the Corporate Debtor. The relevant excerpts of the NeSL record have been produced hereunder: -

<i>Name of the Submitter:</i>	<i>M/s Bakliwal Vyapaar Private Limited</i>
<i>Schedule -2 Bank (Y/N):</i>	<i>N</i>
<i>Name of the Corporate Debtor:</i>	<i>M/s Sibri traders Private Limited</i>
<i>Unique Debt Identifier Number:</i>	<i>AADCB1238R_AABCP1864D</i>
<i>Registered Address:</i>	<i>C/0. KIFTA, 203, Sarat Bose Road, 3rd Floor, Nr-Canara Bank Building, Kolkata, WB-700029</i>
<i>Total Outstanding Amount:</i>	<i>20696803.00</i>
<i>Default Amount:</i>	<i>20696803.00</i>
<i>Date of Default:</i>	<i>05-05-2024</i>
<i>Status of Authentication of Default:</i>	<i>DEEMED TO BE AUTHENTICATED</i>
<i>Date of Last Acknowledgement of Debt:</i>	<i>Not Available</i>

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21. Therefore, considering the entire facts of the case so far discussed and taking into account the decision of the Hon'ble Apex Court in the case of *Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407* in which it has been already held that a petition under IBC be admitted if there is clear debt and default, we are of the considered opinion that in the present case, default on behalf of the Corporate Debtor for repayment of the debt amounting to Rs. 2.06 crores have occurred on 05.05.2024. Further, the Section 7 Petition filed by the Financial Creditor is complete in all aspects providing all the details of debt and default as required in Part IV of the Application in Form 1 and attaching all the necessary supporting documents including ROD from NeSL as required in Part V of the Application. We have also found that the date of default being 05.05.2024 and the present application having been filed on 17.10.2024, it is filed within the limitation period. Considering that all the above criteria are fulfilled as required under the I & B Code, we find that this Application deserves to be admitted u/s 7 for initiating CIRP against the Corporate Debtor.

22. We have observed that the loan facility granted has a value of more than 1 crore and has been disbursed to the Corporate Debtor from 07.05.2022 till 30.08.2022 in accordance with the loan agreement

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dated 06.05.2022. The Corporate Debtor defaulted due to its inability to pay the same within the agreed repayment schedule, thereby causing default.

23. Thus, the Applicant / Financial Creditor has proved that there is a 'debt' and 'default' on the part of the Corporate Debtor. Hence, as per Section 7(5) of IBC, 2016, the present application is required to be admitted, and the Corporate Insolvency Resolution Process (CIRP) is required to be initiated against the Corporate Debtor, i.e., M/s Sibri Traders Private Limited.

24. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the default, which is more than the threshold limit of Rs. 1 crore applicable at present. The application is also filed within limitation period and complete in all respects, and a resolution professional is also proposed as per section 7(3)(b).

25. The Financial Creditor, in Part III of the Application, has proposed the name of Mr. Sumit Shukla as Interim Resolution Professional. His Registration Number is IBBI/IPA-003/IP-N00064/2017-2018/10550, R/o B-4/702, Krishna Apra Garden, Plot-7, Vaibhav Khand, Indrapuram, Ghaziabad, Uttar Pradesh- 201014, Email:

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sumit_shukla@rediffmail.com. He has duly given consent in Form No. 2 dated 15.10.2024, annexed as **Annexure II** with the Application. The Law Research Associate of this Tribunal, Ms. Kriti Kaushal, has checked the credentials of Mr. Sumit Shukla and found that no disciplinary proceeding is pending against the proposed IRP, and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorisation till 31.12.2025. After considering these details, we appoint Mr. Sumit Shukla, having registration No. IBBI/IPA-003/IP-N00064/2017-2018/10550, as Interim Resolution Professional (IRP).

26. Accordingly, this application is admitted u/s 7 of the Code, 2016 under the following terms and conditions.

- i.** The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e., **M/s Sibri Traders Private Limited**, is hereby admitted.
- ii.** We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii.** This Adjudicating Authority hereby appoints Mr. Sumit Shukla to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 25 above.

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- iv. The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -
 - a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, Arbitration Panel or other Authority;
 - b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

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- vi. Apart from above prohibitions in respect of the corporate debtor, it is further directed that the supply of essential goods or services to the corporate debtor, as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- vii. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- viii. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.
- ix. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
- x. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor and to constitute a Committee of Creditors (hereinafter referred as “*COC*”) and shall file a report certifying the constitution of the COC to this Tribunal on or before the expiry of thirty days from the date

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of his appointment, and shall convene the first meeting of the COC within seven days of filing the report of the constitution of the COC.

- xi.** The COC in its first meeting shall appoint a Resolution Professional (hereinafter referred as “**RP**”) as per the provision of section 22(2) and file an application before this Tribunal for confirmation of the appointment of the RP.
- xii.** The Suspended Board of Directors of the corporate debtor is directed to give to IRP/RP complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the IRP/RP all the information regarding maintaining the Backup and regarding service provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the service provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case, accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs.
- xiii.** The Statutory Auditor is directed to share with the Resolution Professional the audit documentation and the audit trails,

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which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI.

- xiv.** The IRP/RP is directed to take custody and control of all the records of information relating to assets of the Corporate Debtor, its Books of Account in physical form or the computer systems storing the electronic records at the earliest in accordance with the provision of Regulation 3A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “CIRP Regulations, 2016”).
- xv.** The Financial Creditor shall also provide necessary assistance to IRP/RP in obtaining the necessary information about the Corporate Debtor as envisaged in Regulation 4(3) of the CIRP Regulations, 2016.
- xvi.** In case of any non-cooperation by the Suspended Board of Directors or the Statutory Auditors, IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for the retrieval of relevant information from the systems of the corporate debtor.
- xvii.** The IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench/IBBI/MCA for this purpose.
- xviii.** The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate

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debtor, particularly for government portals, for various compliances.

- xix.** The IRP/RP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.
- xx.** The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities'/institutions/ others pertaining to the Corporate Debtor which would be relevant in the CIR proceedings.
- xxi.** The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIR Proceedings as per law.
- xxii.** The IRP/RP shall collate the data obtained from (a) the claim(s) made before it and (b) information gathered from the records including those maintained by the Corporate Debtor.
- xxiii.** The IRP/RP is further directed to send regular progress reports to this Tribunal every month.
- xxiv.** We direct the Financial Creditor to deposit a sum of Rs.1,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

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Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

27. A certified copy of the order shall be communicated to both the Applicant Financial Creditor and the Respondent Corporate Debtor. The learned counsel for the Applicant Financial Creditor shall deliver a certified copy of this order to the IRP forthwith. The Registry is also directed to send a certified copy of this order to the IRP at his e-mail address forthwith.
28. List the matter on 26.05.2025 for filing of the progress report/further proceeding.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date- 24.04.2025