

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1473 of 2025

(Arising out of Order dated 17.09.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Special Bench, Ahmedabad in Company Petition (IB) No.76 of 2022)

IN THE MATTER OF:

Kunal Structure India Pvt. Ltd. & Anr. ...Appellants

Versus

Kotak Mahindra Bank Ltd. ...Respondent

Present:

For Appellants : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Vishwas Shah, Mr. Mehul Khare and Mr. Varad Nath, Advocates.

**For Respondent : Mr. Gaurav Mitra, Ms. Lavanya Pathak, Mr. Akshay Goel, Mr. Harsh Tandon Ms. Ishani Mukherjee and Ms. Lathika Chawala, Advocates.
Dr. Abhinav Chandrachud, Advocates for Intervenor.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by the Corporate Debtor (“CD”) challenging the order dated 17.09.2025 passed by the third Member of the National Company Law Tribunal (“NCLT”) giving his opinion on two questions, referred to the third Member by the Hon’ble President vide order dated 24.03.2025. By the opinion dated 17.09.2025, which is impugned in the present Appeal, Ld. third Member has agreed with the findings and order of Judicial Member delivered on 10.01.2025. The Appellant aggrieved by the order dated 17.09.2025 has come up in this Appeal.

2. Brief background facts necessary to be noted for deciding the Appeal are:

- (i) The Financial Creditor – Kotak Mahindra Bank Ltd. (“**Kotak**”) sanctioned various credit facilities to the CD between September 2017 to 17th March, 2021. Loan recall notices were issued by the Bank to the CD on 13.11.2021, 19.01.2022 and 27.01.2022.
- (ii) A Company Petition (IB) No.76 of 2022 was filed by the Kotak against the CD claiming financial debt and default to the extent of Rs.18,11,06,790.12 as on 19.01.2022. The CD filed a reply in Section 7 application objecting to clubbing 21 Loan Agreements in one proceeding. It was pleaded that the CD is functioning as a Contractor for infrastructure project of the Government and Government entities and CD is running Company with 728 employees and 15 current projects. It was further pleaded that the CD is holding Arbitral Awards aggregating to Rs.30 crores against National Highway Authority of India (“**NHAI**”) dated 26.06.2018 for Rs.20,27,39,408 and two Awards against Rajkot Municipal Corporation dated 25.01.2018 and the execution of the Awards is pending.
- (iii) The Adjudicating Authority heard the parties. Reliance was placed by the CD on judgment of the Hon’ble Supreme Court in **Vidharbha Industries Power Ltd. vs. Axis Bank Ltd.**

(2022) 8 SCC 352. Additional affidavits were filed by the CD before the Adjudicating Authority. The Adjudicating Authority heard Section 7 application and passed an order on 17.01.2023 relying on the judgment of the Hon'ble Supreme Court in **Vidharbha Industries** (supra) directing the proceedings under Section 7 to be kept in abeyance for six months.

- (iv) After expiry of the six months, Section 7 application was again listed and heard and on 10.01.2025, split verdict was delivered by Judicial Member and Technical Member. Judicial Member took a decision to admit Section 7 application, whereas Technical Member took a decision to reject Section 7 application with liberty to file an application after invoking the guarantee facility under ECLGS of the given Term Loan. There being difference of opinion between both the Members, under Section 419 of the Companies Act, 2013, the President, NCLT vide order dated 24.03.2025 referred the matter on the difference of opinion to third Member.
- (v) On difference of opinion between the two Members in order dated 10.01.2025, two questions were referred to the third Members they are – (a) Whether the admission of Corporate Debtor into CIRP can be once again kept in abeyance based on the order of Vidarbha Industries Power Ltd?; and (b) Whether corporate debtor can be admitted/rejected into CIRP

on merits?. The third Member after hearing the parties by order dated 17.09.2025 answered both the above questions in Paragraph 28 agreeing with the opinion of judicial Member.

(vi) The CD has filed this Appeal challenging the above opinion of the third Member.

3. We in our order dated 25.09.2025 have noted the respective submissions of learned Counsel for the parties. In Paragraphs 10, 11 and 12 of the order, we noted following:

10. We have considered the submissions of the parties and perused the records.

11. The main issue which has been canvassed in this appeal is the applicability of the judgment of Hon'ble Supreme Court in **Vidarbha Industries Power Ltd. v. Axis Bank Ltd. (2022) 8 SCC**. The Hon'ble Supreme Court in the said judgment in paragraph- 86 & 88 has made following observations:-

“86. Even though Section 7(5)(a) IBC may confer discretionary power on the adjudicating authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner.

88. The adjudicating authority (NCLT) has to consider the grounds made out by the corporate debtor against admission, on its own merits. For example, when admission is opposed on the ground of existence of an award or a decree in favour of the corporate debtor, and the awarded/ decretal amount exceeds the amount of the debt, the adjudicating authority would have to exercise its discretion under Section 7(5)(a) IBC to keep the admission of the application of the financial

creditor in abeyance, unless there is good reason not to do so. The adjudicating authority may, for example, admit the application of the financial creditor, notwithstanding any award or decree, if the award/decretal amount is incapable of realisation. The example is only illustrative.”

12. The case of the Vidarbha Industries was a case where award/decrees in favour of the CDs, which were subject to appeal. The relevant consideration in such cases have been noticed by the Supreme Court extracted in above paragraphs. The submission of both the parties centres around the applicability or non-applicability of Vidarbha Industries Powers Ltd. in the case. Ld. 3rd Member has opined that benefit of said judgment cannot be claimed by the appellant. It is true that execution proceedings are pending for last more than 7 years but in view of the fact that appellant’s case is that two execution proceedings item no. 1 & 2 are fixed for 18.10.2025. We are of the view that appeal need to heard after 30 days to await the order, if any, in the said proceedings. We list this appeal on 06.11.2025. Appeal having been fixed for 06.11.2025, we request the Adjudicating Authority not to pass any order in Section 7 application in pursuance of the impugned order.”

4. The Appellant from time to time has filed various additional affidavits bringing on record subsequent status and execution proceedings with respect to Award obtained by the CD against Rajkot Municipal Corporation and NHAI.

5. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant and Shri Gaurav Mitra, learned Counsel appearing for Respondent.

6. Learned Counsel for the Appellant submits that law laid down by the Hon’ble Supreme Court in **Vidharbha Industries** is fully attracted in the facts of the present case. In the present case, Section 7 application was filed by Kotak Mahindra Bank Ltd. for amount of

Rs.18,11,06,790.12, whereas the CD has arbitral Award in its favour of much more amount. Total amount, which is recoverable from Rajkot Municipal Corporation and NHAI is Rs.76,87,74,939/- with interest as on 23.09.2025. It is submitted that execution proceedings were initiated by the CD for execution of the Award against Rajkot Municipal Corporation being Commercial Execution Petition No.27 of 2021 and Commercial Execution Petition No.388 of 2021. It is submitted that with regard to Award against NHAI a Commercial Execution Petition No.276 of 2021 and 648 of 2022 were filed and one Execution Petition was disposed of on 08.07.2022, where the amount of payment of Rs.2.50 crores was received on 01.09.2025, which was offered to be paid to the Financial Creditor, but no response was received. Learned Counsel for the Appellant referring to various additional affidavits submits that Section 34 petition filed by NHAI has been dismissed on 30.12.2025. Learned Counsel for the Appellant has also placed reliance on order of Hon'ble Supreme Court passed in Civil Appeal Nos.3640-42 of 2025 – ***Periyammal (Dead) through Legal Representatives and Ors. vs. V. Rajamani and Anr.***, where Hon'ble Supreme Court has issued direction to all the High Courts to obtain status of pending Execution Petitions and ensure that Execution Petitions are decided and disposed of within a period of six months. It is submitted that the Appellant has also filed Special Civil Application in Gujarat High Court seeking direction for disposal of execution proceedings.

6.1 Learned Counsel for the Appellant submits that the view of the third Member that CD is not entitled for the benefit of judgment of the Hon'ble Supreme Court in **Vidarbha Industries**, is incorrect. Facts of the **Vidarbha Industries** and decision laid down therein is fully attracted in the facts of the present case. The Adjudicating Authority itself being satisfied that judgment of the Hon'ble Supreme Court in **Vidarbha Industries** is applicable has kept in abeyance the proceedings for six months. There cannot be another opinion in the same proceeding taking the view that judgment of the **Vidarbha Industries** is not attracted. Learned Counsel for the Appellant submits that the Appellant is functioning as Contractor for Government projects and is a running Company with 728 employees and initiation of CIRP will hamper the interest of the Appellant. The Appellant is likely to receive the amount from execution proceedings, which shall be paid to the Financial Creditors. It is submitted that earlier an amount of Rs.10 crores was received in execution proceedings, which was disbursed to Axis Bank, the Financial Creditor having not shown any inclination to accept the amount. Learned Counsel for the Appellant submits that Respondent, Kotak Mahindra Bank during the pendency of the proceedings has received amount of Rs.11,03,92,171/- in terms of ECLGS post filing of Section 7 application.

7. Learned Counsel appearing for the Respondent refuting the submissions of learned Counsel for the Appellant submits that the Appeal filed by the Appellant is premature. The order impugned in the Appeal is

opinion of third Member on reference made by the Hon'ble President due to difference of opinion of judicial Member and Technical Member. The opinion, which is impugned in the Appeal, the third Member has directed the Registry to place the order before NCLT Ahmedabad to a pass appropriate order with respect to CD in Company Petition (IB) No.76 of 2022. No orders having yet been passed, the Appeal is premature and need not be entertained. Learned Counsel for the Respondent submits that arbitral Award, which is claimed was obtained in the year 2018 and more than seven years have elapsed, but no amount has been paid by the CD to the Financial Creditor. It is submitted that the judgment of **Vidarbha Industries** was subsequently explained by the Hon'ble Supreme Court in subsequent judgments. In the Review Application filed by Axis Bank to review the judgment of the **Vidarbha Industries**, although the review was dismissed, but it was observed that judgment is in facts and situation of the said case. Learned Counsel for the Respondent has relied on judgment in **M Suresh Kumar Reddy vs. Canara Bank, (2023) 8 SCC 387** and the order of the review passed in **Vidarbha Industries** and certain judgments of this Tribunal. It is submitted that judgment of the Hon'ble Supreme Court in **Periyammal** (supra) does not absolve the CD to clear his debt and default having been established, which is not even questioned by the Appellant, the Appellant is not entitled for any indulgence in this proceeding.

8. We heard learned Counsel for the partis and perused the record.

9. We in our order dated 25.09.2025 has noted the amount receivable by the Appellant under the various arbitral Award in Paragraph 6. It is useful to notice Paragraph 6 of the order, which is as follows:

“6. The additional-affidavit has been filed by the appellant, in the additional affidavit appellant has referred to the decrees obtained in four cases and the amounts which is yet to be recovered except item no.4 in the affidavit where an amount of Rs. 2.50 crores has been received on 01.09.2025 as a full and final settlement and the said execution has been disposed of. In paragraph-2 of the additional affidavit following has been stated:-

“2. The amounts receivable by Appellant/ CD under the various arbitral awards in indicated at Paragraph no.7 (xxxvii) of appeal. In addition to the same, table below provides present stated of proceedings in connection with the said awards.

No.	Award Against	Date of Award	Amount to be recovered by the Petitioner. (with interest as on 23.09.2025)	Next date of Execution Petition
1.	<i>The Municipal Commissioner, Rajkot</i> Commercial Execution Petition no. 27 of 2021	25.01.18	Rs. 2,17,21,273/- (Principal) 1,95,28,334/- (Interest) 4,12,49,607/-	<i>Pending</i> <i>18.10.2025</i>
2.	<i>The Municipal Commissioner, Rajkot</i> Commercial Execution Petition no. 388 of 2021	25.01.18	Rs. 6,89,59,143/- (Principal) 5,96,48,039/- (Interest) 12,86,07,182/-	<i>Pending</i> <i>18.10.25</i>

3.	1.Chief Engineer (NH) & Addl. Secretary and 2. Executive Engineer, National Highway Division Execution Petition (regular) no. 648 of 2022	26.06.18	Rs 20,60,08,111 (Principal) 39,29,10,039/- (Interest) 59,89,18,150/-	Pending 01.11.2025
4.	1. Executive Engineer, National Highway Division and 2. The Superintending Engineer Petitioner has filed the execution petition no.8 of 2023 on 24.11.2023	08.07.22	---- Disposed off as settled	Payment of Rs. 2.50 crores received on 01.09.2025 as full and final settlement. Disposed off as settled between the parties on 13.09.2025.
Total Amount to be Recovered by the Petitioner			Rs.32,16,88,527/- (Principal) Rs.76,87,74,939/- (Principal with interest as on 23.09.2025)	
Total Amount of claim by Respondent No.1 bank			Rs.18,11,06,790.12 (Page no.5 of CP IB No. 76 of 2022) plus interest.”	

10. On 17.01.2023, the Adjudicating Authority after hearing the parties has passed an order for keeping Section 7 application in abeyance for six months relying on judgment of Hon’ble Supreme Court in **Vidarbha Industries**. In Paragraph 19 of the judgment, following has been directed:

“**19.** From the facts of this case it is apparent that there is a debt of Rs. 18.11 crore, which is within limitation, and the corporate debtor has defaulted in its payment. Thus, all ingredients for admission into CIRP under Section 7 of IBC are present in this case. However, as guided by Hon’ble Supreme Court in the case of Vidarbha Industries Power Limited, and on consideration of the decision of Indore Bench in the case of Krishidhan Seeds Private

Limited cited supra, we find it proper to keep this proceeding for admission under Section 7 of IBC in abeyance for six months from today. We make it clear that if the corporate debtor fails to settle the due debts within the time given, we will be constrained to pass further orders. We further direct the corporate debtor not to sell the assets mortgaged with the applicant or other financial creditors without approval of this Adjudicating Authority.”

11. After the lapse of period of six months, Section 7 application came for consideration before the Adjudicating Authority and split verdict was passed on 10.01.2025 in Section 7 application. Learned judicial Member in Paragraph 16 held that Section 7 application needs to be admitted. Paragraph 16 of the order is as follows:

“16. All the requirements of Section 7 application are fulfilled. Though earlier, applicant has suggested name of IRP, in the written submissions, they have mentioned that the Tribunal may appoint any local IRP from the panel of Insolvency Professional.”

12. Learned Technical Member rejected Section 7 application by following order:

“The present petition CP(IB) 76 is rejected with liberty to file after invoking the Guarantee facility under ECLGS of the second term loan, if the respondent is not able to repay the remaining debt due outstanding subject to the applicable provisions of IBC 2016.”

13. The Hon’ble President by an order dated 24.03.2025 by the powers conferred under Section 419(5) of the Companies Act, 2013 read with Rule 60(2) and (3) of the NCLT Rules, 2016 made reference to third Member on the point of difference of opinion as noticed in the order, which is as follows:

“(a) Whether the admission of Corporate Debtor into CIRP can be once again kept in abeyance based on the order of Vidarbha Industries Power Ltd?

- (b) Whether corporate debtor can be admitted/rejected into CIRP on merits?”

14. The third Member has delivered his opinion on 17.09.2025. After hearing the parties, the third Member in Paragraph 28 has concurred with the opinion of Judicial Member and directed the matter to be placed before NCLT Ahmedabad to pass appropriate order. Paragraphs 28, 29 and 30 of the order are as follows:

“28. Accordingly, the issue “(a) Whether the admission of Corporate Debtor into CIRP can be once again kept in abeyance based on the order of Vidarbha Industries Power Ltd?” is answered in the negative and I agree with the findings with the Ld. Member (Judicial) and accordingly I am of the view that the admission of the Corporate Debtor into CIRP should not be kept in abeyance based on the order of Vidharbha Industries Power Ltd. Further, in regard to the issue “(b) Whether corporate debtor can be admitted/rejected into CIRP on merits?” is answered in affirmative in the following terms: In the facts and circumstances of the case, the Corporate Debtor is required to be admitted into the CIRP and in this regard I agree with the findings of Ld. Member (Judicial).”

29. I direct the Registry to place this order before the NCLT, Ahmedabad to pass appropriate order with regard to the CP (IB)No. 76 of 2022.

30. The record to be forwarded back to the NCLT, Ahmedabad Bench forthwith.”

15. In the present Appeal, the Appellant has filed various additional affidavits, bringing on record subsequent events and status of execution proceedings initiated by the CD against Rajkot Municipal Corporation and NHAI. The fact, however, remains that no amount to be realised from the above execution proceedings, is paid to the Financial Creditor. The order of Adjudicating Authority on Section 7 application is yet to be passed and opinion of third Member was directed to be placed before NCLT Ahmedabad with record of Company Petition (IB) No.76 of 2022, as noted above.

16. Learned Counsel for the Appellant in its submission emphasized on various subsequent events, including direction passed by Hon'ble Supreme Court in the case of **Periyammal** (supra) directing all High Courts to ensure that execution proceedings are decided within six months and the progress made in the execution proceedings including the dismissal of Section 34 application filed by NHAI against the arbitral Award of the CD. The Appellant has also pleaded that Section 7 application filed by the SBI and Punjab and Sind Bank has also been rejected on 20.01.2026 and 29.03.2026 by NCLT. The Appellant has also relied on the order of High Court of Gujarat dated 02.04.2026, where High Court has directed to conclude execution of award within six weeks.

17. From the facts, which have been brought on record and submissions made by the Appellant, present is a case where due to difference of opinion, an order of split verdict between Judicial Member and Technical Member was passed on 10.01.2025 and the matter was referred to third Member by the Hon'ble President, NCLT under Section 419 sub-section (5) of the Companies Act, 2013. Section 419 sub-section (5) of the Companies Act, 2013 provides as follows:

“419(5) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.”

18. Section 419 sub-section (5) require reference by President on point of difference between Members and decision on the opinion of majority Members. The opinion of third Member, which is questioned in the present Appeal is opinion given by third Member, due to split verdict between Judicial Member and Technical Member and on reference made by the President, NCLT. The opinion is to be placed before the NCLT Ahmedabad Bench to pass appropriate order with regard to Company Petition (IB) No.76 of 2022.

19. The law is well settled that in Section 7 proceedings, it is open for the parties to place before the Adjudicating Authority any subsequent event, which has material bearing on the proceedings. We are of the view that it is open for the Appellant to place subsequent events before the Adjudicating Authority, which may have bearing on the outcome of Section 7 application. The opinion of third Member impugned in the Appeal is opinion, which is to be placed before the NCLT Ahmedabad Bench to pass appropriate order. We are of the view that at this stage various submissions raised by the Appellant, need no consideration.

20. As observed above, it is open for the Appellant to place subsequent facts and events before the Adjudicating Authority. Ends of justice will be served in fixing a date before the Adjudicating Authority for both the parties to appear. The Appellant is also at liberty to file an additional affidavit before the Adjudicating Authority, brining on record subsequent events, which may have material bearing on Section 7 proceedings within two weeks from today. We make it clear that we are not expressing any

opinion on merits of submission of either of the parties and it is for the Adjudicating Authority to take a decision in accordance with law.

21. Let the parties appear before the Adjudicating Authority on 2nd June, 2026. The parties are at liberty to place this order before the Adjudicating Authority for fixing a date of hearing of Section 7 application. The Appeal is disposed of accordingly. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

8th May, 2026

Ashwani