

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1&P2
IA(I.B.C)/ 5513(MB)2025
IN
C.P. (IB)/ 660(MB)2025
AND
C.P. (IB)/660(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **23.06.2026**

NAME OF THE PARTIES:

Bank of India

Vs

Supreme Engineering Limited

Under Section 7 of the IBC

ORDER

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

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

//Sumant//

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/660/MB/2025

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

BANK OF INDIA

[CIN: U99999MH1906PLC000243]

Star House , C-5,G-Block,

Bandra Kurla Complex, Bandra (E)

Mumbai – 400051.

...Financial Creditor

V/s

SUPREME ENGINEERING LIMITED.

[CIN.: L99999MH1987PLC043205]

R-223 MIDC Complex, Thane,

Belapur Road, Rabale, Navi Mumbai,

Maharashtra, India-400701.

...Corporate Debtor

and

IA (I.B.C) 5513/MB/2025

in

CP (IB) No. 660/MB/2025

*[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
r/w Rule 11 of the National Company Law Tribunal Rules, 2016]*

SUPREME ENGINEERING LIMITED.

...Applicant/CD

V/s

BANK OF INDIA

... Respondent/FC

Pronounced: 23.06.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For FC: Sr.Adv.Mustafa Doctor a/w Adv Apurva Sanglikar i/b Vidhii Partners

For CD: Adv.Mr. Shyam Kapadia, Adv Ms. Soumya a/w T.N. Tripathi

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No. 660 of 2025 (Application) was filed on 10.07.2025 by Bank of India, the Financial Creditor (FC) having CIN No.: U99999MH1906PLC000243, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Supreme Engineering Limited, the Corporate Debtor (CD), having CIN No.: L99999MH1987PLC043205.

1.2 This Application has been affirmed by one Mr. Revin Kurien, Chief Manager, Bank of India.

1.3 As per Part IV of the Application, the amount claimed to be in default is Rs. 117,50,63,582.23/- (Rupees One Hundred Seventeen Crore Fifty Lakhs

Sixty-Three Thousand Five Hundred and Eighty-Two and Twenty-Three Paise only) as on 02.03.2025.

- 1.4 The date of default is stated as 20.05.2021(**Amended vide order dated 16.07.2025**)
- 1.5 The Applicant has proposed S. Gopalakrishnan, having Registration No. IBBI/IPA-002/IP-N00151/2017-2018/10398, to act as the Interim Resolution Professional (IRP) in case the Application is admitted.
- 1.6 Part V of the of the Application mentions the Securities held by the Applicant, which are as stated hereunder
- a. Hypothecation of stocks & book debts of the company both present and future (1st pari passu charge with Thane Bharat Sahakari Bank Ltd.)
 - b. TDR of amount Rs.17,53,641/- as margin against BG amount exclusively charged to BOI.
 - c. Hypothecation of Plant and Machinery at Khopoli Unit (1st pari passu charge with Thane Bharat Sahakari Bank Ltd.)
 - d. Hypothecation of Plant and Machinery at Rabale Unit (1st pari passu charge with Thane Bharat Sahakari Bank Ltd.)
 - e. All that piece or parcel of land bearing Plot No. R-222 (area 2363 sq. mtrs) & R-223 (area 1380 sq. mtrs), along with all factory buildings/structures, sheds, warehouses and Plant and machinery standing or to be installed thereon in future, situated within the village limits of Rabale Thane Trans Creek (TTC) Industrial Area, MIDC, Taluka and District Thane (1 pari passu charge with Thane Bharat Sahakari Bank Ltd.)

- f. Row House No.9, Ground Floor, along with parking space No. A-18 in Divya Swapna Co- operative Housing Society Ltd., Survey No. 11(Part), C.T.S. No. 164, 164/10, Village Wadhavali and Survey No. 78 (Part), C.TY.S. No. 788, Village Borla Dr. C.P. Gidwani Road, Chembur, Mumbai-400074 (Exclusive charge with Bank of India).
- g. All that piece or parcel of Non-agricultural land bearing (I) Survey No. 17-A (part), Hissa No. 2 and CTS No. 2951, admeasuring 1530 sq. mtrs and (2) Survey No. 2A and Survey No. 28 and CTS No. 2953 admeasuring 22,811.2 sq.mtrs, both totally admeasuring 24,341.2 sq. mtrs, along with building/structures/godowns/ and other construction thereon together with the plant and machinery installed / embedded thereon, situated within the limits of Village Vihari, Khopoli Municipal Council, Taluka Khalapur, Municipal Council, Taluka Khalapur, District - Raigad (1st pari passu charge with Thane Bharat Sahakari Bank Ltd.)

2. CONTENTIONS OF APPLICANT (FC)

- 2.1 The Applicant states that Corporate Debtor was sanctioned certain credit facilities by the Financial Creditor Bank. The said facilities were amended and renewed from time to time.
- 2.2 It is stated that following facilities aggregating to a sum of Rs. 98,17,00,000 were availed by the Corporate Debtor. The Facilities availed are mentioned below-;

Date of Disbursement	Facility	Amount
	FUND BASED LIMIT	
04.10.1989	Cash and Credit (Stock and book debts upto 90 days) (004330100020514)	40,00,00,000/-
26.11.2020	WCDL-CESS (004365310000078)	4,00,00,000/-
31.12.2020	WCTL- GECL (004365210000038)	8,11,00,000/-
	NON-FUND BASED LIMIT	
	Letter of Credit	45,00,00,000/-
	Bank Guarantee	1,00,00,000/-
	Credit Exposure Limit	6,00,000/-
	Total	98,17,00,000/-

2.3 Owing to non-payment towards the credit facilities availed from the Financial Creditor, account of the Corporate Debtor was classified as NPA on 19.08.2021.

2.4 Further the Applicant has also filed an Original Application bearing No. 848 of 2024 before the Ld. Debt Recovery Tribunal, Mumbai -III for a claim of Rs. 106,55,64,683.91/- (Rupees One Hundred and Six Crores Fifty-Five Lacs Sixty-Four Thousand Six Hundred and Eighty-Three and Ninety-One Paise Only). The said Original Application is pending before the Ld. Debt Recovery Tribunal, Mumbai -III and the Financial Creditor craves the leave to refer to and rely upon the records and proceedings thereto, if required by this Ld. Tribunal.

2.5 It is further stated that the Corporate Debtor vide letter dated 03.02.2025 offered a One Time Settlement for an amount of Rs. 42.00 Crores thereby duly acknowledging the outstanding debt due and payable to the Financial Creditor. A Copy of the said letter is attached as **Exhibit – BB** to the Application.

- 2.6 However, vide letter dated 3 February 2025 bearing no. NM/ARB/PK/2024-25/133, the Applicant rejected the said One Time Settlement proposal put forth by the Corporate Debtor. The Copy of the said letter is attached as **Exhibit-CC** of the Application.
- 2.7 Further on hearing dated 17.05.2025 this Tribunal allowed the Applicant to file Additional documents/ amend the petition. The same was to be done by filing an Additional Affidavit. Henceforth the Applicant has filed Additional Affidavit dated 23.07.2025.
- 2.8 The Applicant vide additional affidavit amended the date of default to 20.05.2021 and amended the amount claimed to be in default to Rs. 117,82,79.601.20
- 2.9 The Applicant has in the Additional Affidavit also stated that Bank Guarantee have not been invoked by the Applicant , hence the same would not form part of the claim filed in the present petition.
- 2.10 Further the Applicant has modified computation/particulars of the claim demonstrating facility wise outstanding amounts. The same is Annexed as **Exhibit - C** to the Additional Affidavit as per the same the revised amount of claim is Rs. 117,50,63,582.23 as on 02.03.2025.
- 2.11 The Applicant has also placed Balance Sheet of the Corporate Debtor as on 31.03.2024 which is annexed as **Exhibit – B** to the Additional Affidavit.
- 2.12 The Applicant has attached the following supporting documents along with the Application and Additional Affidavit dated 23.07.2025
- a) Master data of the Applicant and the CD.
 - b) Copies of Authorisation of Assignment, Form 2 written communication from the Proposed Insolvency Resolution Professional

- c) Copy of record of default filed with the Information Utility.
- d) Copy of Sanction Letter dated 17th December 2018 issued by the Financial Creditor enhancing the sanctioned limits from Rs. 59.22 Crores to Rs. 72.54 Crores
- e) Copy of Supplemental Deed of Hypothecation dated 27th December 2018 creating a charge of Hypothecation over the Corporate Debtors Stocks and Book Debts in favour of the Financial Creditor for a total aggregate Cash Credit limit of Rs. 45.00 crores.
- f) Copy of the Demand Promissory Note dated 27th December 2018 for Rs.15.00 crores (being the additional amount.)
- g) Copy of Demand Promissory Note dated 27th December 2018 for Rs.5.00 crore (being the additional amount.)
- h) Copy of Form L-516 multipurpose document dated 27th December 2018 containing various covenants from the Corporate Debtor for Rs. 15.00 crores.
- i) Copy of Form L-516 multipurpose document dated 27th December 2018 containing various covenants from the Defendant No.1 for Letter of Credit Facility.
- j) Copy of Form No. OD-194 Deed of Guarantee executed by Mr. Sanjay Rattan Chowdhri, Mrs. Lalita Sanjay Chowdhri and Mr. Rattan Prakash Chowdhri on 27th December 2018 thereby jointly and severally guaranteeing the due repayment of all advances, liabilities, bills and promissory notes of the Corporate Debtor for the additional limit of Rs. 20.00 crores
- k) Copy of Memorandum of Oral Assent dated 31.08.2019

- l) Copy of Sanction Letter dated 23rd December 2019 issued by the Financial Creditor reviewing the existing limit from Rs. 72.54 crore to Rs. 71.77 crore.
- m) Copy of the Sanction letter dated 4th May 2020 offering the Demand Loan facility of Rs. 4.00 crore to Corporate Debtor.
- n) Copy of the Demand Promissory Note dated 26th May 2020 for Rs 4.00 Crores
- o) Copy of Memorandum of Oral Assent dated 26th May 2020.
- p) Copy of Form No. OD-194 Deed of Guarantee executed by Mr. Sanjay Rattan Chowdhri, Mrs. Lalita Sanjay Chowdhri and Mr. Rattan Prakash Chowdhri on 26th May 2020 thereby jointly and severally guaranteeing the due repayment of all advances, liabilities, bills and promissory notes of the Corporate Debtor for the limit of Rs. 4.00 crores.
- q) Copy of the unconditional and irrevocable undertaking for COVID Emergency Support Scheme (CESS 2020) dated 26th May 2020 which was also duly signed by Mr. Sanjay Rattan Chowdhri, Mrs. Lalita Sanjay Chowdhri and Mr. Rattan Prakash Chowdhri.
- r) Copy of the IFD-X Hypothecation Cum Loan Agreement dated 26th May 2020 for hypothecation of the Plant & Machinery, Stocks and Book Debts by Corporate Debtor in favour of the Financial Creditor for Rs.4.00 Crore.
- s) Copy of the Form L-516 multipurpose document dated 26th May 2020 containing various covenants from Corporate Debtor.
- t) Copy of the sanction letter dated 31st December 2020 offering the Demand Loan facility of Rs.8.11 crore.

- u) Copy of multi-purpose Form L-516 multipurpose, document dated 31st December 2020.
- v) Copy of Memorandum of Oral Assent dated 2nd January 2021.
- w) Copy of letter dated 30th September 2022 issued by the Financial Creditor to the Corporate Debtor for allowing holding on operation in Cash Credit for 6 months with 10% cut back towards adjustment of over dues.
- x) Copy of letter dated 3rd February 2025 bearing no. SEL/Bol/ 2024-2025/08 addressed by the Corporate Debtor.
- y) Copy of letter dated 3rd February 2025 bearing no. NM/ARB/PK/2024-25/133 addressed by the Financial Creditor.
- z) Notice u/s 13 (2) of the SARFAESI Act, 2002 dated 6th March 2023 issued by the Financial Creditor upon the Corporate Debtor
- aa) Copy of certificates issued under the Banker's Book's Evidence Act.
- bb) Copies of letters dated 6th March 2023 issued by the Financial Creditor thereby invoking the guarantees provided by Mr. Sanjay Rattan Chowdhri, Mrs. Lalita Sanjay Chowdhri, Mr. Rattan Prakash Chowdhri and M/s. Sanjay Rattan Chowdhry (HUF)
- cc) Copy of statement of accounts of the loan accounts of Corporate Debtor maintained with the Financial Creditor.

3. CONTENTIONS OF CD

3.1 Affidavit-in-Reply dated 12.09.2025 was filed and affirmed by one Mr. Sanjay Chowdhri, who is stated to be the Director and authorized representative of the CD.

3.2 It is submitted that the present Petition filed on 05/03/2025 based on alleged default of 20/05/2021 is barred by limitation. The Applicant has not pleaded or sought any extension of limitation in the manner as prescribed by Order VI, Rule 6 of the Code of Civil Procedure, 1908. The present Petition is barred by limitation prescribed under Article 137 of the Limitation Act.

3.3 The Corporate Debtor argues that the Applicant has not produced any evidence in support of the alleged default. The Applicant has chosen 20/05/2021 as default by mechanically calculating it 90 days prior to alleged NPA of 19/08/2021. The Applicant has not placed on record any proof of default.

3.4 It is stated that the Applicant has suppressed that the actual default started during section 10-A of IBC period. By email dated 21/12/2020 the Applicant has recorded that cash credit account has exceeded its limit by Rs.7,25,36,204/- as on 21/12/2020. By another email dated 06/01/2021 the Applicant has again recorded that the cash credit account had exceeded its limit by Rs.15,22,22,451/-. The account was overdrawn due to default in payment of LC from December 2020. The actual default commenced from December 2020. These defaults are deliberately suppressed and ignored to defeat statutory provisions under Section 10-A of the IBC, 2016. copy of emails dated 21/12/2020 and 06/01/2021 are Annexed as **Ex 2 and Ex 3** to the Reply.

3.5 It is submitted that the Petition is based on default dated December 2020 and is barred by proviso to section 10A of the Insolvency and Bankruptcy Code, 2016.

3.6 The Applicant has already filed various Company Petitions against the guarantors under section 95 of IBC, 2016 in respect of same date as alleged in default:

3.7 It is submitted that on filing of Section 95 Petitions interim moratorium under section 96 become operative in respect of all debts under section 96 of the Insolvency and Bankruptcy Code, 2016.

3.8 Further the Corporate Debtor in this regard has placed reliance on the following judgements.

1. Dilip B. Jiwrajka V Union of India [2023 SCC OnLine SC 1530]
2. Tata Capital Ltd. v. Geeta Passi [2024 SCC OnLine Bam 1897]

3.9 It is submitted that the Hon'ble Tribunal in terms of provisions of the Code has to record a finding about the existence of "default" on the basis of either record of the information utility or on the basis of other documentary evidence produced by the Applicant.

3.10 It is submitted that, for recording the finding that there is a default this Hon'ble Tribunal will have to record a finding as to (a) what is the principal amount, (b) what is the rate of interest, which the Applicant is permitted to charge on that principal amount, (c) what is the total amount due and when was the default committed by the Respondent in paying this amount.

3.11 The Applicant has not produced any documentary evidence to prove the default. The NeSL Certificate is given up by filing additional affidavit. NeSL Certificate is proved as patently erroneous. The Applicant has not produced a statement of accounts certified as per the Bankers Book Evidence Act showing the alleged default of 20/05/2021. There is no documentary evidence placed on record to prove the default on the basis of which the

Hon'ble Tribunal would be in position to record a finding that the default had occurred on 20/05/2021. The Applicant has not produced a complete statement of accounts, or copies of entries in a Bankers' Book in accordance with Bankers Book Evidence Act, 1891 as mandated by Part-IV of prescribed Form-1 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

3.12 It is submitted that the statutory requirement as prescribed by clause -(a) of sub - section (3) of section 7 is not complied. The said provision requires the Applicant to furnish along with Application - record of the default recorded with the Information Utility or such other record or evidence of default as may be specified. The alleged statements of accounts are neither showing "disbursement" nor alleged "default" of 20/05/2021. The above Petition filed in perfunctory manner is wholly incompetent and not in conformity with section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and as per prescribed statutory form - 1 and thus the Petition is liable to be rejected.

3.13 Further the Applicant has not pleaded any basis for such mechanical modification of date of default and the same is not supported by any evidence of default as mandated by section 7(3)(a) of the said Act. The alleged date of default is mere idea bereft of any fact and evidence. The present Petition is thus liable to be rejected under section 7(5)(b) of the Code.

3.14 The Applicant has relied on alleged record of default of NeSL [Ex-E,pg.28 Petition] showing the date of default as 24.08.2021. On Applicant's own

showing the alleged date of default based on NeSL is incorrect. The Applicant has filed additional affidavit dated 23.07.2025 ["additional affidavit"] and has stated *"I say that the Financial Creditor is in process of getting NeSL certificate rectified...."* The NeSL Certificate relied by the Applicant is therefore irrelevant and inconsequential to the present Petition and the same cannot be construed as a proof of default as mandated by section 7(3)(a) of the Code.

3.15 The Applicant has relied on sanction letter dated 17/12/2018 [Ex-F, pg.45, Petition] whereby cash credit limit was allegedly enhanced from Rs.25 crores to Rs.40 crores. The sanction letter exposes the falsity of the date of disbursement of Rs.40 crores on 04/10/1989. The Applicant has mechanically chosen date of default as 20/05/2021. However, there is no whisper in the Petition about the particulars of "amount claimed to be in default" as on 20/05/2021 as required by sub Rule 1 of Rule 4 and prescribed Form -1. In absence of "amount claimed to be in default", the date of default cannot be ascertained or adjudicated. The particulars of "amount claimed to be in default" required to be stated as per prescribed form is thus sine qua non for deciding date of default.

3.16 By a letter dated 06.03.2023 the Applicant has issued 13(2) notice under the SARFAESI Act, 2002 with allegation that the accounts were classified as NPA on 19.08.2021. The Applicant has claimed Rs.1.06 cr under bank guarantee facility. The said claim is false to the knowledge of the Applicant as apparent from the order dated 16/07/2025

3.17 The Applicant has taken symbolic possession of the scheduled assets on 20/05/2023. The legality and validity of the action and measures initiated

by the Applicant is pending for adjudication in S.A. No.342 of 2023 ["SA"] before DRT -III, Vashi, Navi Mumbai.

3.18 Besides the regular recovery proceeding for realization of the securities under the SARFAESI Act, 2002, the Applicant, much prior to filing of the present Petition on 05/03/2025, has also filed Original Application No.848 of 2024 for recovery of the alleged dues and for enforcement of the securities. The Hon'ble Tribunal has issued summons dated 11/10/2024 in Original Application No.848 of 2024. However, the Respondent has yet not received copy of Original Application

3.19 The motive for the present petition is to exert pressure on the Respondent. There is no intent for resolution and the petition is utilised merely as a means for realizing the secured debt. It is designed to place improper pressure on the Respondent. The Applicant is malafidely dragging the Respondent to the present insolvency proceeding. The said 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 many judgments. The Applicant is misusing and abusing the process of this Hon'ble Tribunal as Debts Recovery Tribunal.

3.20 In the circumstances, the question of there being any default which can give the Applicant any right to initiate this proceeding does not arise. The present proceedings are therefore mala fide and filed with extraneous purpose not known to the Insolvency and Bankruptcy Code and therefore required to be dismissed.

3.21 The Corporate Debtor to this regard has placed reliance on the following judgements;-

- a. M/s SS Engineers v. Hindustan Petroleum Corporation Limited
- b. Vidarbha Industries Power Limited v. Axis Bank Limited,

3.22 The Applicant has not produced the complete copy of financial contract as required by para-5, Part-V of statutory Form-1 prescribed by law. Further the Applicant has not produced principal hypothecation document. In absence of principal hypothecation document, the supplementary deed cannot be proved. The Supplemental deed of Hypothecation dated 27.12.2018 is restricted to Rs.20 crores. There is no proof regarding disbursement of alleged credit facilities of Rs.25 crores. The alleged document is inadmissible in evidence for want of stamping.

3.23 The Corporate Debtor disputes demand promissory note for Rs.5 crores and multipurpose documents as well as memorandum of oral assent for consideration of Rs.13.2 crores. Further the assets assent is not relatable to the sanction limit of Rs.20 crores. Further the demand loan of Rs.4 crores was payable after a moratorium of six months. The said loan was not even due or payable on 20.05.2021.

3.24 The Corporate Debtor states that interest in respect of the said loan was served till August 2021 when the Applicant erroneously froze the Respondent's accounts. The CD disputes the demand promissory note and unstamped memorandum of extension of equitable mortgage and hypothecation agreement for Rs.4 crores as alleged. Further WCTL of Rs.8.11 crores were payable after moratorium of 12 months from 31/12/2021. Obviously, the said loan was not due or payable on 20/05/2021 and as such the same cannot be said to be in default on 20/05/2021 as alleged. The Applicant has erroneously included WCTL facility in the

present proceeding I say that the Respondent has effectively engaged with the Applicant to resolve the dispute. However, the Applicant is not cooperating with the Respondent and they are harassing the Respondent by indulging into multiple proceedings.

3.25 The demand notice is ex- facie illegal and contrary to provision of SARFAESI Act. The said notice is challenged in SA No.342 of 2023 and the Hon'ble Tribunal has granted status - quo in the matter.

3.26 The Applicant has filed Additional Affidavit placing on record balance - sheet of 31.03.2024. The said balance - sheet cannot be construed as admission of any liability for the purpose of section 18 of the Limitation Act. No such assertion is made in the additional affidavit.

4. REJOINDER

4.1 The Rejoinder is filed by one Revin Thomas Kurien on behalf of the Applicant on 20.09.2025

4.2 With respect to the Limitation aspect the Applicant states that Corporate Debtor defaulted on 20.05.2021. Owing to the Covid-19 pandemic, vide an order dated 10.01.2022 the Hon'ble Supreme Court of India in Suo Moto Writ Petition (C) No.3 of 2020 held that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply

4.3 The limitation period commenced from 01.03.2022. Further, it is pertinent to point out the Corporate Debtor vide its letters dated

20.07.2023, 15.09.2023., 14.08.2024, 10.10.2024 and lastly on 03.02.2025 bearing no. SEL/BOI/12024-2025/08 (annexed as Exhibit-BB @ Pg. 200 to the Petition) issued repetitive one-time settlements to the Financial Creditor thereby acknowledging and admitting the debt. The Copies of OTS is attached as Exhibit – B to the Application.

4.4 It is a settled position in law that repeated and documented acknowledgments of debt effectively extend the limitation period under the Code. Further, section 18 of the Limitation Act, 1963 gets triggered the moment when an acknowledgment in writing, signed by the Corporate Debtor is issued. Particularly, an OTS proposal of a live claim, made within the period of limitation, is construed as an acknowledgment to attract section 18 of the Limitation Act, 1963.

4.5 Further it is stated that petition is not barred by section 10A of the code as the Corporate Debtor has defaulted from 20.05.2021 and the same is abundantly demonstrated by the statement of accounts (at Exhibit- HH to the Petition at page no.228) and repeated acknowledgements of debt issued by the Corporate Debtor.

4.6 Further, with reference to the emails dated 21.12.2020 and 06.01. 2021 addressed by the Financial Creditor, the same are general emails calling upon the Corporate Debtor to regularize its account and nowhere concludes that the default occurred in December 2020.

4.7 In view of the aforesaid categorical admissions made on part of the Corporate Debtor. it is abundantly clear that - i) Corporate Debtor has admitted committing a default and has nowhere stated the otherwise; and ii) Corporate Debtor is misusing the intent of section 10A of the Code, so

also admit that there has been a default, however painting an illusion to show that the said default occurred during the period stipulated under section 10A of the Code and on this sole ground, the Petition deserves to be admitted by this Hon'ble Tribunal

4.8 Further it is stated that it is a settled position in law that simultaneous proceedings can be initiated against the Corporate Debtor and the guarantor for the same debt. Further, the right of cause of action ensures proceeding against the principal borrower and the guarantor in equal measure in case of default of debt acting jointly and severally. In fact there is no bar on the Financial Creditor to proceed against the principal borrower and the guarantor since guarantor's liability arises out of the guarantee agreement. which is independent from the Corporate Debtor's liability

4.9 It is important to note that 'debts' in section 96(1)(a) of the Code is with respect to all the debts of particular personal guarantor and not in general, which is abundantly clear from the language of section 96(1)(b)(ii) of the Code. Hence, the word 'debt' cannot be misinterpreted, so as to include debt of the Corporate Debtor.

4.10 Moreover, the cause of action for section 7 is default in loan repayment by the Corporate Debtor whereas the cause of action of section 95 under the Code is non-payment of debt on invocation of guarantee. Hence, interim moratorium under section 96 of the Code does not mean that all proceedings which arises out of the debt in subject come under moratorium. Only the action against the particular guarantor pertaining to the said debts shall be in moratorium . Further, even the Code does not anywhere state

that moratorium under section 96 of the Code will affect the proceedings under section 7 of the Code

4.11 Further it is stated that Financial Creditor has initiated actions against the Corporate Debtor under SARFAESI Act, 2002. However, the same does not bar the Financial Creditor from filing the present Petition under section 7 of the Code. It is a settled position that in fact even mere possession of Corporate Debtor's assets under SARFAESI Act, 2002 does not bar the Financial Creditor from filing a petition under section 7 of the Code

4.12 The proceedings initiated under SARFAESI Act,2002 and the Code are independent in nature and hence, SARFAESI Act,2002 does not eliminate the Financial Creditor's statutory right to invoke petition under section 7 of the Code

4.13 the Financial Creditor has provided for the following so as to demonstrate and prove default on part of the Corporate Debtor –

- a. Bifurcation/ computation of principal, rate of interest, default amount;
- b. Account Statements along with necessary certificates under the Banker Books Evidence Act;
- c. Balance Sheets;
- d. NeSL certificate (Financial Creditor has applied for rectification of the said certificate, which is annexed and marked as Exhibit -C. Further, the Financial Creditor reserve its right to file the authenticated copy of the NeSL certificate before this Hon'ble Tribunal);
- e. Crisil Report; and
- f. OTS Proposals issued by the Corporate Debtor

4.14 With reference to the entries made in the Statement of Accounts and as categorically pointed out by the Corporate Debtor in its reply, it is essential to point out that –

(Account No. 004365310000078 WCDL Cess -.Rs. 4 Crore)

1. Loan disbursement commenced from 29.05.2020 and the last instalment was disbursed on 15.07.2020. The copy of statement of accounts for Account No. 004365310000078 is marked as Exhibit – D.
2. Cash Credit, by nature, is an operational account wherein a certain limit was given to the Corporate Debtor for utilization, which, has been drawn by the Corporate Debtor on various dates, which are reflected in the outstanding ledger as well
3. The Cash Credit account of the Corporate Debtor was into default from 20th May 2021 and subsequently turned NPA on 19.08.2021. Hence, all loan accounts of the Corporate Debtor, are classified as NPA on 19.08.2021. The same is marked as Exhibit-E is a copy of statement of accounts for Account No. 004330100020514.
4. Disbursement of Rs. 8.11 Crore in the Cash Credit account was done on 31.12.2021 . A copy of statement of accounts for Account No 004356210000038 is annexed as Exhibit E to the Rejoinder.

5. ADDITIONAL AFFIDAVIT (Applicant)

5.1 Vide order dated 29.10.2025 this Tribunal granted opportunity to the Applicant to place on record Form D issued by NeSL.

5.2 The Applicant filed an Additional Affidavit dated 29.10.2025, affirmed by Mr. Revin Thomas, who is stated to be the Chief Manager of the Applicant, and brought on record certain additional documents.

5.3 The Applicant has filed NeSL Form D with Status of Authentication of Default as **“AUTHENTICATED”**. Further the date of default is mentioned as 20.05.2021. The same is attached as **Exhibit A** to the Additional Affidavit.

6. REPLY TO ADDITIONAL AFFIDAVIT

6.1. Affidavit-in-Reply dated 01.11.2025 was filed and affirmed by one Mr. Sanjay Chowdhri, who is stated to be the Director and authorized representative of the CD.

6.2. Petitioner has filed present Petition on the basis of the alleged default dated 20.05.2021. However, the statement of accounts from 01.07.2021 placed on record by the Petitioner does not prove the alleged default of 20.05.2021 which is disputed and denied by the Respondent.

6.3. The alleged date of default dated 20.05.2021 is manipulative and deliberately relied to defeat the statutory provisions contained in Section 10-A of the IBC, 2016. Account was overdrawn in December 2020 owing to the devolution of letter of credits. However, on 10.03.2021 and 02.03.2021 further letters of credit devolved exceeding the limit and thereafter the Account exceeded the sanctioned limits of Rs 40 crores. The actual default occurred on 10/03/2021 as apparent from statement of account downloaded from net-banking facility provided by the Petitioner. The said default on 10/03/2021 had fallen during section 10-A period.

The copy of balance statement showing the default of 10/03/2021 is attached and annexed as Exhibit 2 to the Reply.

6.4. Further it is stated that the Petitioner has manipulated NeSL Certificate to avoid statutory bar created by Section 10-A of the IBC, 2016. The NeSL certificate relied along with petition is showing date of default as 24.08.2021. The Petitioner has mechanically reduced 90 days from 24.08.2021 and unilaterally amended the date of default in NeSL Certificate as 20.05.2021. There is no basis of alleged date of default of 20/05/2021, it is de hors to the default of 10.03.2021 that occurred during Section 10-A period.

6.5. The present petition is barred by section 10-A of the IBC, 2016 as the actual date of default [10.03.2021] has fallen during statutory period prescribed thereunder.

7. REJOINDER TO ADDITIONAL AFFIDAVIT

7.1. The Applicant states that Corporate Debtor, vide its letter dated 02.03.2021, made a request for an ad-hoc limit of Rs. 10,00,00,000/- (Rupees Ten Crore Only) as normal operations of the Company had been once again disrupted owing to the Covid pandemic. The branch office of the Financial Creditor, considering the long association with the Corporate Debtor and in view of the Covid-19 pandemic, allowed the sanction of an ad-hoc limit of Rs. 10,00,00,000/- (Rupees Ten Crore Only) to the Corporate Debtor. Subsequently, the Corporate Debtor utilised the cash credit facility up to the limit of Rs. 50,00,00,000/- (Rupees Fifty Crore Only). The Corporate Debtor exceeded the limit of Rs. 50,00,00,000/- (Rupees Fifty Crore Only) for the first time on 20.05.2021 as is seen from

the statement of accounts annexed by the Corporate Debtor to its Reply. The account was thus classified as NPA on 19.08.2021 (with the date of default being 20.05.2021). The argument of the Corporate Debtor that the default occurred in December 2020 or on 10th March 2021 is thus misplaced and not sustainable.

7.2. Further the Corporate Debtor has itself admitted in its letter dated 20 July 2023 (annexed at Exhibit-B to the rejoinder filed by the Financial Creditor), wherein a One Time Settlement was offered to the Financial Creditor, that even after the Suspension Period, as on 30th April 2023, an amount of Rs. 69.76 Cr was outstanding in the CC Account, when the total outstanding was Rs.81.30 Cr. The said default continues to remain till date of filing of the captioned Petition and that no documents are produced try the Corporate Debtor to prove otherwise.

7.3. In fact, even after filing of the present Petition, the Financial Creditor has received various settlement proposals from the Corporate Debtor dated 29th September 2025, 16th October 2025, 11th October 2025, 29th November 2025, 8th December 2025 and 16th December 2025, thereby admitting its debt and default

7.4. It is a settled position in law that, the Hon'ble Tribunal has to examine two factors- a) whether there is a debt; and b) whether there is a default, both of which aspects are abundantly clear from the replies filed and the OTS letters issued by the Corporate Debtor as well as the statement of accounts maintained by the Financial Creditor.

7.5. It is stated that the default did not occur during the Section 10A period and hence the Company Petition was filed is maintainable. In any event,

the default by the Corporate Debtor is of an amount over the threshold prescribed under the Code. Therefore, it is prayed that the Company Petition be allowed and admitted.

8. SHORT SYNOPSIS (FC)

8.1. The Financial Creditor has quoted the Following judgements;-

- a. FS Financial Services Limited v. Servall Constructions Pvt. Ltd. & Ors. [2026 SCC Online Bom 2460] Para No. 44,45,46.
- b. Axis Trustee Services Ltd. V. Brij Bhusan Singal & Anr. [(2022) SCC OnLine Del 3634]

9. SHORT SYNOPSIS (CD)

9.1. The Corporate Debtor has contended on the following issues.

1. Company Petition is incomplete in its contents, lacking material facts and statutory particulars prescribed by Form – 1:
2. Petition is barred by section 10-A of the Code as actual “default” occurred during 10-A period:
3. There is no evidence to prove the alleged default:
4. Petition is barred by interim – moratorium under section 96 of the Code:
5. The Petition is, otherwise, filed for extraneous purpose to exert pressure on Respondent and to misuse it as recovery proceedings.

9.2. The Corporate Debtor has relied on the following judgement

- a. Noida v. Anand Sonbhadra, [(2023) 1 SCC 724
- b. Rohan Vijay Nahar v. State of Maharashtra, [(2026) 2 SCC 182
- c. B. K. Education Services Private Limited v. Parag Gupta [(2019) 11 SCC 633

- d. Suresh Kumar Reddy v. Canara Bank
- e. Anant Construction (P) Ltd v. Ram Niwas [1994 SCC OnLine Del 615]
- f. Subhash Chander Chouhan v. M/s Kaliber Associates Pvt. Ltd,
- g. Dilip B Jiwrajka v. Union of India [(2024) 5 SCC 435]
- h. SBI v. Ramakrishnan [(2018) 17 SSC 394]

10. IA/5513/(MB)2025

10.1. The present Interlocutory Application (I.A.) bearing IA/5513/(MB)2025 was filed on 02.11.2025 by the Applicant named Supreme Engineering Limited (who is the Respondent in C.P. 660/2025), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC"), seeking the following reliefs: -

"a. That the further proceedings in Company Petition No.CP (IB)/660 (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.

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

(c) For such further and other reliefs and the nature and circumstances of the case may require."

10.2. The Applicant (Corporate Debtor) is filing the present Interlocutory Application seeking dismissal of the Company Petition bearing C.P. No. 660 of 2025 ("captioned Petition") , as the Company Petition is in respect of same debt forming part of company petition, the Petitioner has filed five separate Company Petitions against the guarantors under section 95 of IBC, 2016.

10.3. On filing of Section 95 Petition interim-moratorium under section 96 become operative in relation to all debts which includes the debt forming the subject matter of the present debt. The "debt" against the borrower and guarantors are one and the same liability and obligation.

10.4. Further it is stated that the Petitioner has filed five separate Company Petitions against the guarantors under section 95 of IBC, 2016. The details for the following hereunder.

Date of filing	Petition /diary No.	Name of guarantor
15-08-2025	C.P. (IB)/867(MB)2025	M/s Sanjay Rattan Chowdhri (HUF)
21/08/2025	C.P. (IB)/903(MB)2025	Mrs Sumitra Chowdhri
28/08/2025	C.P. (IB)/904(MB)2025	Mrs Lalita Chowdhri
26/08/2025	C.P. (IB)/905(MB)2025	Mr. Sanjay Chowdhri
26/08/2025	C.P. (IB)/923(MB)2025	Mr. Rattan Chowdhri

10.5. Hence, present Application for stay of Company Petition No. CP (IB)/660 (MB)/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.

10.6. The Applicant has also relied on the following judgements;-

- a. Dilip B. Jiwrajka V Union of India [2023 SCC OnLine SC 1530]
- b. Tata Capital Ltd. v. Geeta Passi [2024 SCC OnLine Born 1897]

11. ANALYSIS AND FINDINGS

11.1. We have perused the documents as placed before us and heard both the Ld. Counsels for the FC and the CD.

11.2. On perusal of the documents it is observed that Applicant sanctioned/Renewed various financial facility including Cash Credit Facility of Rs 40 Crore, EPC , BG etc. aggregating to Rs. 72.54 Crore vide sanction letter dated 17.12.2018.

11.3. The same were secured by Supplemental Deed of Hypothecation, Demand Promissory Note, Form L-516 ,Memorandum for Extension of equitable Mortgage and Deed of personal Guarantee executed by Sanjay Rattan Chowdhary, Ratan Prakash Chowdhary, Lalita S Chowdhary and Mrs. Sumitra Chowdhary.

11.4. Again, vide sanction letter dated 23.12.2019 the facilities were renewed.

11.5. Thereafter the Applicant vide sanction letter dated 04.05.2020 sanctioned a demand Loan Facility under Covid Emergency Support Scheme(CESS) 2020 for an amount of Rs. 4 crores .The Repayment terms were

- a. First Six months moratorium
- b. Next six months – Rs. 10 lacs per month (2.50% of principal amount)
- c. Next 12 months – Rs. 28.32 lacs per month (7.08% of Principal Amount)

11.6. Again, vide sanction letter dated 31.12.2020 the Applicant sanctioned a working capital term loan of Rs. 8.11 crore to the Corporate Debtor under GECL 2.0. The Repayment terms were

- a. First 12 months – Moratorium (Interest to be serviced as and when applied)
- b. Next 48 months – 48 EMI of Rs.19,93,239/-.

11.7.Both the CESS and GECL were secured by Supplemental Loan Cum Hypothecation Agreement, Demand Promissory Note, Memorandum of Extension of Equitable Mortgage.

11.8.The Applicant has placed account statement on record which shows that amount pertaining to Demand Loan under CESS was disbursed from 29.05.2020 to 19.06.2020.The Outstanding amount as shown is Rs 3,35,12,604.22. Further with respect to loan pertaining to GECL the loan came to be disbursed on 31.12.2020 and the outstanding amount is Rs 08,19,30,133. The account statement of Cash Credit Account is also annexed which has an outstanding amount of Rs 70,09,25,383.69.

11.9.Further the Applicant has placed relevant Certificate under Section 2A of Bankers Book Evidence act 1891 with respect to all the 3 accounts which support the disbursement and amount outstanding.

11.10. The Applicant vide email dated 22.12.2020 and 06.01.2021 informed the Corporate Debtor that the Cash Credit A/c has crossed the sanctioned limit and requested to regularise the same at the earliest. However, the same was never done by the Corporate Debtor and as a result it was declared Non-performing Asset on 19.08.2021. Further the Applicant issued Demand Notice under Section 13(2) of the SARFAESI Act 2002 on 06.03.2023.

11.11. Thereafter the Corporate Debtor through various OTS proposals dated 20.07.2023,15.09.2023,14.08.2024, 10.10.2024 and 03.02.2025 tried to negotiate with financial creditor however the same were not fruitful .

11.12. The date of default as mentioned in part IV of the Application is 20.05.2021. The NeSL form D states the Status of Authentication of default as "AUTHENTICATED".

11.13. Further at this moment this Tribunal shall consider whether the debt is due which is payable and whether the same is being defaulted or not. Hence in our considered view the Financial Creditor has placed enough evidence and documents to show that a financial debt is due and payable and the same is defaulted by the Corporate Debtor.

11.14. One of the main contentions of the Corporate Debtor is that the petition is barred by section 10-A as the actual default has occurred during 10A period. Further the Corporate Debtor states that the date of default should be 10.03.2021 as the Corporate Debtor exceeded the limit sanctioned in Cash Credit account and even after 90 days did not regularised the Account.

11.15. In this regard the Applicant in its rejoinder has stated that an Ad hoc Facility of additional 10 crore was provided to the Corporate Debtor , thereby aggregating the Cash Credit limit to 50 Crore. However, no such sanction letter has been produced by the Applicant.

11.16. We have carefully considered the submissions regarding the date of default and Section 10A of the Insolvency and Bankruptcy Code, 2016 (IBC). It is observed that even if the date of default is taken as

10.03.2021, the present petition would not be barred by the provisions of Section 10A.

11.17. As of 10.03.2021, the amount allegedly in default and payable by the Corporate Debtor to the Applicant was Rs. 40 Crores. Even if this initial default arose during the Section 10A period, the underlying default persisted thereafter. Subsequent to the expiration of the Section 10A period, the default (Interest) comfortably breached the statutory threshold limit of Rs. 1 Crore, with the total outstanding amount standing at Rs. 70,09,25,383.69.

11.18. Furthermore, a perusal of the record and the sanction terms agreed upon between the parties reveal that the Corporate Debtor also defaulted on two other credit facilities—namely, the Covid Emergency Support Scheme (CESS) and the Guaranteed Emergency Credit Line (GECL). These defaults occurred outside the protective window of Section 10A. Consequently, the plea of Section 10A bar raised by the Corporate Debtor cannot be sustained. The Total amount claimed to be in default for the GECL loan as on 02.03.2025 stands at Rs.4,47,37,861.54 as per page 79 at Additional Affidavit . This amount is itself exceeds the threshold of Rs. 1 Cr as prescribed under section 4 of IBC, 2016.

11.19. However, the date of default as mentioned in Part IV of the Application i.e 20.05.2021 is also substantiated by the NeSL form D. The Corporate Debtor in its OTS letter dated 20.07.2023 has itself stated that there account became NPA on 16.08.2021. Hence in our considered view the defence by the Corporate Debtor that the petition is barred as date of default is within 10A period is moonshine and cannot be sustained.

11.20. We further observe that the present petition has been filed well within the prescribed period of limitation. The date of default is 20.05.2021. Subsequently, the Corporate Debtor issued multiple One-Time Settlement (OTS) letters, thereby repeatedly acknowledging the debt and extending the period of limitation under Section 18 of the Limitation Act, 1963. These OTS letters constitute to written acknowledgments. First being on 20.07.2023, 15.09.2023, 14.08.2024, 10.10.2024, and most recently on 03.02.2025, which were all within limitation effectively extending the limitation period up to 02.02.2028. Given that the instant petition was filed on 10.07.2025, we find that the petition is within the statutory timeline.

11.21. The objections regarding alleged defects in the petition are also liable to be rejected. Procedural defects which are curable cannot defeat substantive rights where debt and default are otherwise established. In the present case, the Applicant has placed on record necessary documents through Rejoinder and Additional Affidavit, thereby curing any alleged defects.

11.22. The Applicant has shown no record of the date of disbursement of 04.10.1989 with respect to cash credit facility, however, in the Reply itself the Corporate Debtor does not dispute the debt of Rs. 40 crore which was defaulted by the him. Further, in cash credit facility, the amount is never disbursed one time rather it is disbursed as and when the fund is needed by the Customer. The Statement of Account shows that various times the corporate Debtor availed the facility. Further, vide sanction letter dated 17.12.2018 the limit was enhanced to Rs 40 Crore.

Outstanding amount in the statement of Account is Rs. 70,09,25,383.69 and the same is supported by Certificate of Bankers Book Evidence Act 1891.

11.23. In respect of the other facility's the Applicant has provided well enough documents including sanction letter, security documents and statement of Accounts to prove that the amount was disbursed, the debt was due and the same was defaulted by the Corporate Debtor.

11.24. Adverting to the contention raised by the Corporate Debtor that the Ld. Debt Recovery Tribunal (DRT) has granted an order of *status quo* on the ground that the statutory Demand Notice is illegal, this Tribunal finds such an argument to be devoid of legal merit. It is a settled position of law that at the stage of admission of an application under Section 7 of the Code, this Adjudicating Authority is strictly required to ascertain only two fundamental criteria: the existence of a 'financial debt' and the occurrence of a 'default' in its repayment. Furthermore, it is pertinent to emphasize that proceedings initiated under the SARFAESI Act, 2002, are inherently recovery mechanisms in nature, whereas the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016, is a mechanism pursued for the resolution and revival of the Corporate Debtor rather than a mere collection mechanism. Consequently, the pendency of or any interim reliefs granted in parallel recovery proceedings before the DRT do not pose a legal impediment to the initiation of CIRP herein.

11.25. Further the allegation of the Corporate Debtor that the Applicant is misusing IBC as a recovery law is unsustainable and untenable. The

Application filed by the Applicant is for initiation of CIRP whose purpose is resolution of the Corporate Debtor rather than recovery of dues from the Corporate Debtor.

11.26. Contention raised by CD in its Reply and IA 5513 of 2025 that the Petition is barred by statutory Moratorium under section 96 of the IBC.

11.26.1. The Corporate Debtor in its reply contends that the petition is barred by the statutory moratorium being imposed by Section 96 of the IBC. The same is the limited issue that arises for consideration in the present I.A bearing no. 5513 of 2025. It is stated that the Financial Creditor has already filed application under section 95 of the IBC against all the personal guarantors for the debts forming part of the Current Company Petition and the same is pending before NCLT hence an Interim Moratorium under section 96 exists.

11.26.2. 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...”

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.

11.26.3. 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.

11.26.4. 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. (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.”

11.26.5. A similar exposition of law is found in the decision of our 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 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."

11.26.6. This Tribunal agrees with the aforesaid pronouncements. The legal position that emerges is that the interim moratorium under Section 96 is person-specific and not debt-centric and does not apply to the benefit of the CD. The pendency of proceedings against personal guarantors does not eclipse or suspend the independent statutory remedies available against the CD under Part II of the IBC.

11.26.7. It is also a settled principle of law that the liability of a guarantor is co-extensive with that of the principal borrower. However, such co-extensiveness does not imply exclusivity of remedies. A creditor is entitled, in law, to proceed simultaneously or independently against the principal borrower as well as the guarantor. The initiation of proceedings against one does not operate as a legal bar against the other.

11.26.8. In view of the foregoing analysis, this Tribunal is of the considered opinion that the plea of bar under Section 96 of the IBC is devoid of merit and cannot be sustained. The interim moratorium in respect of personal guarantors does not operate as a bar to the initiation or continuation of insolvency proceedings against the CD.

11.26.9. With the above directions, the present application, i.e., **IA/5513/(MB)/2025**, is hereby **dismissed** as not maintainable.

11.27. In view of the above, this Tribunal finds that the existence of financial debt and default stands established; the defence under Section 96 is untenable on merits; and the objections regarding defects are curable and have been duly addressed.

11.28. The judgments cited by the Applicant are supportive of admission of this matter.

11.29. The Corporate Debtor has relied upon the following judgments, which in our view do not help its case for the following reasons:-

- a. *Judgments of Hon'ble Supreme Court in the matter of Noida v. Anand Sonbhadra, [(2023) 1 SCC 724] and B. K. Education Services Private Limited v. Parag Gupta [(2019) 11 SCC 633], does not come to rescue the case of Corporate Debtor as the Applicant has placed documents including Sanction Letters, Loan Agreements and Statement of Accounts, which evidence that money was disbursed by the Applicant against payment of Interest and the same constitutes a financial debt, which is defaulted by the Corporate Debtor. Moreover in regard to CESS facilities and CESS facilities, complete documents as to disbursement have been placed on record and that the debt amount in respect of CESS facilities alone and default with respect to sid amounting to Rs. 4.47 Crore is sufficient to meet threshold of Rs. One Crore as stipulated under Section 4 of the IBC.*
- b. *Judgment of Hon'ble Supreme Court in the matter Rohan Vijay Nahar v. State of Maharashtra, [(2026) 2 SCC 182] and Judgment of Hon'ble Delhi High Court in matter of Anant Construction (P) Ltd v. Ram Niwas [1994 SCC OnLine Del 615] do not apply as in the instant case the Application is complete in all respect. The Applicant vide Additional Affidavit has rectified the defect if any which was there in the Application. Further the Applicant has not taken any*

new pleadings in the Rejoinder and has denied the contentions of the Corporate Debtor as so taken in the Reply.

- c. Judgement of Hon'ble Supreme Court in the matter of M/s S. S Engineers v. Hindustan Petroleum Corporation Limited, [2022 SCC OnLine SC 1385] does not apply to the facts of the present case as as the Applicant has filed a Section 7 Application and not a Section 9 Application. Further the documents as filed by the Applicant prove the default committed by the Corporate Debtor. Further the Applicant has approached this forum for Resolution of the Corporate Debtor rather than recovery of its dues.*
- d. Judgement of Hon'ble NCLAT in matter of Subhash Chander Chouhan v. M/s Kaliber Associates Pvt. Ltd does not apply to the facts of the present case as the Applicant has placed enough documents to show that a Financial Debt exists. Further the Corporate Debtor was given enough opportunities to deal with the Documents as submitted by the Applicant and we have considered the same before arriving on this Judgement.*
- e. Judgement of Dilip B Jiwrajika Vs Union Bank Of India [2023 SCC OnLine SC1530] and judgement of Hon'ble Bombay HC in matter of Tata Capital Ltd Vs Geeta Passi [2024 SCC OnLine Born 1897] does not apply to this matter as recently on 06.04.2026 the High Court of Bombay in the matter of IL&FS Financial Services vs Serveall Construction Pvt Ltd ad Ors. (2026) ibclaw.in 2132 HC has held that interim Moratorium under section 96 does not apply to the debt of Principal Borrower. Further the Supreme Court in Dilip B Jiwrajika 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.*

11.30. Hon'ble Supreme Court in Civil Appeal No(s). 2211/2024 decided on 18.02.2026 in the matter of *Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors. 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 WBS&EDCL, 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. 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. 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. 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):

“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. 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). 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 WBSIEDCL 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)

11.31. 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 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.
- 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.

11.32. Applying the ratio of Power Trust (*supra*), we are of the view that the Application is complete in all respects, the Applicant has advanced a financial debt which is in default for an amount exceeding Rs. 1 Crore. The Applicant has placed the necessary proof being record of default issued by the information utility, which clearly indicates that the debt is in default.

11.33. Accordingly, in our view, there exists a debt which is in default and the said debt is within limitation and exceeds the threshold prescribed under Section 4 of IBC, 2016. The present Application is complete, and as per the consent of the proposed IRP as placed on record, no disciplinary proceedings are pending against the said proposed IRP.

11.34. In view of the above, we are left with no choice but to order the commencement of the Corporate Insolvency Resolution Process on the Respondent/CD.

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

ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) No. 660/MB/2025 filed under Section 7 of IBC, 2016, by Bank of India, the Applicant (FC) for initiating CIRP in respect of Supreme Engineering Limited, the CD, is **admitted.**

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

- I. We prohibit:
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor, including the execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;
 - b) transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover, or enforce any security interest created by the Corporate Debtor in respect of its property, including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints the IP as proposed by the Applicant i.e. Mr.S. Gopalakrishnan, having **Registration No. as** IBBI/IPA-002/IP-N00151/2017-2018/10398, and **e-mail address** gopi63.ip@gmail.com having AFA valid till 31.12.2026, as the IRP to carry out the functions under the IBC.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps

will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.

- VIII. That the IRP/IP shall submit to this Tribunal monthly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail.
- XII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XIII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIV. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//Sumant//

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)