NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1

C.P. (IB)/99(MB)2026

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **28.07.2026**

NAME OF THE PARTIES: **Finquest Financial Solutions Private Limited**

V/s

Velex Logistics Private Limited

Under Section 7 of the IBC

ORDER

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

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

//Sumant//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/99/MB/2026

[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]

Finquest Financial Solutions Private Limited

[CIN:-U74140MH2004PTC146715

602,6th Floor,Boston House

Suren Road, Andheri (E)

Mumbai-400093

…Financial Creditor

V/s

Velex Logistics Private Limited

[CIN No. U63000MH2013PTC246482]

Wework,247 Park,13th Floor,

Lal Bahadur Shastri Marg,

Chandan Nagar, Vikhroli (W),

Mumbai-400083

...Corporate Debtor

Pronounced: 28.07.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Applicant: Adv. Mr. Rahul Sarad a/w Adv. Mr. Rihal Kazi, Adv Ms. Ankita Sharma and Adv. Ms. Zainab T i/b M&M Legal Ventures.

For Respondent: Adv. Mr. Kanishk Garg I/b by Adv Prashant Thakre

ORDER

[PER: CORAM]

1. **BACKGROUND**

1.1. C.P. (IB) No.99/MB/2026 (Application) was filed on 03.02.2026 by **Finquest Financial Solutions Private Limited** the Financial Creditor (FC), having CIN: U74140MH2004PTC146715 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of **Velex Logistics Private Limited** the Corporate Debtor having CIN No.U63000MH2013PTC246482.

1.2. This Application has been affirmed by one Akash Tiwari, authorised signatory of the Applicant vide Board Resolution passed on 14.11.2024

1.3. As per Part IV of the Application, the amount claimed to be in default is Rs.1,94,43,067/- (Rupees One Crore Ninety-Four Lakhs Forty-Three Thousand and Sixty-Seven Only).

1.4. The date of default is stated as 26.06.2024.

1.5. The Applicant has proposed the name of Ms. Dipti Narayan Mundra, an Insolvency Professional , having Registration No. IBBI/IPA-001/IP-P-02845/2023-

2024/14366, to act as the Interim Resolution Professional (IRP) (having valid Authorisation for Assignment up to 31.12.2026) (as per IBBI site), in case the Application is admitted.

2. CONTENTIONS OF APPLICANT (FC)

2.1. It is stated that the loan was granted to the Corporate Debtor under the Loan Agreement dated 26.06.2023 for a period of 12 months from the date of disbursement of the loan amount.

2.2. It is the case of the Applicant that the loan amount was disbursed on 26.06.2023 by Cheque No. 001868 dated 26.06.2023 drawn on ICICI Bank, Godrej IT Park Branch, Mumbai. The said loan was to be repaid by the Corporate Debtor on or before 25.06.2024. Thus, the default commenced from the expiry of the last date of loan period, which is 25.06.2024 and thus the default occurred on 26.06.2024.

2.3. After the expiry of the aforesaid 12 months period, the Financial Creditor repeatedly followed up for repayment of the loan amount along with interest thereon, however the Corporate Debtor did not repay the same. Resultantly, the Financial Creditor deposited the post-dated cheques on 14.08.2024 however the said cheques were returned unpaid. The said post-dated cheques were once again presented on 09.10.2024, when the said cheques were yet returned unpaid/ dishonoured.

2.4. The Financial Creditor, resultantly, issued the statutory notice dated 22.11.2024 followed by a complaint under Section 138 r/w 141 of the Negotiable Instruments Act, 1881 against the Corporate Debtor and its directors. The said complaint is pending adjudication before the Additional Metropolitan Magistrate, Vikroli, Mumbai Court.

2.5. Thereafter, the Advocates for the Financial Creditor vide their notice dated 26.11.2025 called upon the Corporate Debtor to repay the entire outstanding loan amount along with accumulated interest and penal interest thereon, as on 31.10.2025 within 15 days from the receipt of the said notice. Despite the said notice being duly delivered upon the Corporate Debtor and its directors, no payments were made thereafter within the requisite time. No payments towards repayment of the said loan amount and/or any part thereon including interest or otherwise has been paid by the Corporate Debtor to the Financial Creditor.

2.6. Further it is stated that having regard to the correspondence and documents, it is evident that the Corporate Debtor has defaulted in the repayment of the outstanding loan amount and that the default of the Corporate Debtor in repayment continues since 26.06.2024.

2.7. The NeSL Form D i.e. the Record of Default states the Status of Authentication of Default as "**DEEMED TO BE AUTHENTICATED".** Further the Date of Default as stated in the NeSL is 26.06.2024.

2.8. Vide Additional Affidavit dated 09.02.2026 the Applicant has attached a Copy of Statement of Accounts issued by ICICI Bank and a Copy of Debit Advise issued by ICICI Bank to show the proof of Disbursement.

2.9. The Applicant has further attached the following documents along with the Application;-

a) Copy of the master data of the Corporate Debtor.
b) The ledger account of the Corporate Debtor in the books of Financial Creditor for the period
c) Copy of the Record of Default - Form D

d) Copy of Loan Agreement entered between Financial Creditor and Corporate Debtor

e) Copy of the extract of the Commercial Credit Information Report by TransUnion CIBIL.

f) Copy of the Sanction letter issued by Financial Creditor to Corporate Debtor.

g) Copy of the Demand Promissory Note issued by the Corporate Debtor to the Financial Creditor.

h) Copy of the Disbursement Memo.

i) Copies of the cheques issued by the Corporate Debtor in favour of the Financial Creditor along with respective cheque return Memos.

j) Copy of the Statutory Notice issued by the Financial Creditor to the Corporate Debtor

k) Copy of the Notice issued by the Financial Creditor's Advocate to the Corporate Debtor.

l) Copy of Balance Confirmation of Financial debt for FY 2023-24 by Corporate Debtor.

m) Copy of Corporate Debtor's Audited Annual Financial Statement as on 31.03.2025.

n) Form 1A (IAAA) - Form for serving copy of Application for initiation of CIRP to the IBBI

3. **<u>REPLY BY CORPORATE DEBTOR</u>**

3.1. Affidavit in reply was filed on 10.04.2026 by the Respondent through Mr. Jignesh Gosar, who is stated to be an Authorized Signatory of the Corporate Debtor.

3.2. The Corporate Debtor states that Petition does not disclose any case warranting admission under Section 7 of the Code. The Petitioner has failed to establish the existence of a clear, unequivocal and legally enforceable default, which is a sine qua non for admission of a petition under Section 7. The Petition is nothing but an attempt to invoke the drastic provisions of the Code as a means of recovery, which is impermissible in law.

3.3. It is submitted that the present Petition is liable to be rejected as the ground of limitation, which goes to the root of maintainability. The Petitioner has itself alleged that the date of default is 26.06.2024 whereas the present Petition has been filed in the year 2026. The Petitioner has failed to place on record any legally valid and subsisting acknowledgment of debt under Section 18 of the Limitation Act, 1963 or any other material that would extend or save limitation in accordance with law. It is a settled principle that limitation must be strictly construed in proceedings under the Code and stale or doubtful claims cannot be permitted to be agitated through the insolvency mechanism. In the absence of a continuous and legally sustainable cause of action, the present Petition is ex-facie questionable and liable to be dismissed.

3.4. It is further submitted that the alleged amount claimed by the Petitioner is arbitrary, inflated and not crystallized. The Petitioner has claimed an amount of INR 1,94,43,067/- based on unilateral calculations which include interest and penal charges. Such computation has neither been mutually agreed nor duly acknowledged by the Respondent. The reliance placed on internal ledger accounts, repayment schedules and other self-generated documents cannot constitute conclusive proof of liability. A disputed and unverified claim cannot form the basis for triggering CIRP under Section 7.

3.5. The Respondent further submits that the present proceedings constitute a gross misuse of the provisions of the Insolvency and Bankruptcy Code, which is not intended to operate as a recovery forum. The Corporate Debtor has relied on the Judgement in Innoventive Industries Ltd. v. ICICI Bank in Civil Appeal Nos. 8337-8338 OF 2017 wherein it has been clearly held that the Code is not a substitute for recovery proceedings. The Petitioner is seeking to invoke the drastic consequences of insolvency proceedings as a means to recover alleged dues, which is impermissible and contrary to the very object and spirit of the Code.

3.6. It is stated that the conduct of the Petitioner further demonstrates that the present Petition has been filed with a coercive and mala tide intent. It is evident from the record that the Petitioner has already initiated proceedings under Section 138 of the Negotiable Instruments Act and issued statutory notices demanding payment. The simultaneous pursuit of criminal proceedings and insolvency proceedings clearly establishes that the objective of the Petitioner is not resolution of insolvency but recovery of money through pressure tactics. Such parallel and overlapping proceedings amount to an abuse of the process of this Hon'ble Tribunal and deserve to be discouraged.

3.7. It is also to submitted that the Respondent is a going concern and actively engaged in business operations, and there is no case of commercial insolvency warranting initiation of CIRP. The Respondent continues to operate its business and is capable of meeting its obligations. The initiation of insolvency proceedings in such circumstances would cause irreparable harm to the business, its employees, stakeholders and overall commercial viability. The Code is intended to resolve genuine cases of insolvency and not to disrupt viable and operational entities.

3.8. It is further submitted that the balance of convenience lies entirely in favour of non-admission of the present Petition. Admission would lead to irreversible consequences including suspension of the management and disruption of business operations, whereas the Petitioner would suffer no prejudice if reasonable time is granted for settlement. The initiation of CIRP in the present case would be disproportionate and contrary to the principles of equity and justice.

3.9. The respondent wishes to settle the genuine dues of the petitioner but not what is demanded in the petition and the respondent would like to have the comprehensive restructuring of all its debts instead of settling with one such creditor. Instant petition deserves to be rejected on account of the act of recovery and not insolvency resolution which is not the intent of the code.

3.10. Further the Respondent has prayed for dismiss the present petition and Grant reasonable time and opportunity to the settle the dues of the Petitioner

4. REJOINDER

4.1. The Affidavit in rejoinder dated 14.05.2026 is filed by one Aakash Tiwari stated to be the Manager - Legal and the Authorised Representative of the Company

4.2. It is stated that the Corporate Debtor has no defence to the Company Petition, and hence, the Company Petition deserves to be Admitted. The Corporate Debtor has not disputed the debt. Though the Corporate Debtor has urged this Hon'ble Tribunal to dismiss the Company Petition, the Corporate Debtor has not been in a position to dispute the fact that there is a default committed by it. In fact, in the Affidavit in Reply, the Corporate Debtor has prayed for 'grant of reasonable time and opportunity to settle the dues of the Petitioner', thereby admitting the debt and default. Therefore, the Company Petition deserves to be admitted and allowed on this ground alone. Furthermore, it is submitted that the recent amendment to Section 7 of the Insolvency and Bankruptcy Code, 2016 vide Insolvency and Bankruptcy Code (Amendment) Act, 2026 leaves no discretion in admitting a Company Petition if the 'debt' and 'default' are established/ proved.

4.3. Further it is stated that the present Company Petition having been filed in the year 2026 has been filed within a period of about one and a half year from the date of the default, and hence, the present Company Petition is within limitation.

4.4. The calculations on the basis of which the amount in default has been stated in the present Company Petition have been duly disclosed and no defect/error/discrepancy therein has been pointed out by the Corporate Debtor. Therefore, the allegations of the Corporate Debtor are incorrect and untenable. Without prejudice to the above, it is clear that the principal amount itself, which is in default, is in excess of Rs.1,00,00,000/-, and hence, the alleged incorrectness in the calculation of the interest thereon will have no bearing in the facts of the present case for the purpose of admission of the Petition.

4.5. Even otherwise, and without prejudice to the above, it is a settled position of law that at the time of the admission of a Petition under Section 7 of the Code, the Hon'ble Adjudicating Authority is not concerned with the actual calculations of the amount in default and it needs to only ascertain whether the amount in default is in excess of the threshold amount as set out in Section 4 of the Code. Since in the present case, the amount in default is above the stipulated minimum threshold, the present Company Petition deserves to be admitted. It is denied that the claim of the Petitioner is disputed or unverified or that such claim of the Petitioner cannot form the basis for triggering CIRP under Section 7 of the Code. The documents annexed by the Petitioner with the Company Petition, including but not limited to internal ledger accounts, repayment schedules, and other documents (self-generated or otherwise) as well as the Audited Financial Statement of the Corporate Debtor as on 31.03.2025 do duly constitute conclusive proof of liability.

4.6. The Applicant further argues that the mere initiation of proceedings under Section 138 of the Negotiable Instruments Act is not a bar to the filing of a Company Petition under the provisions of Section 7 of the Code. Therefore, the issuance of a statutory notice or initiation of such proceedings cannot come to the aid of the Corporate Debtor to resist admission of the present Company Petition under Section 7 of the Code when debt and default are otherwise established.

4.7. The Corporate Debtor has failed to point out even a single fact which could even prima facie demonstrate that the Corporate Debtor is a viable entity. I therefore say that none of the averments made by the Corporate Debtor in the paragraph under reply, merit any consideration, especially once the 'debt' and 'default' have been established. The alleged considerations of viability or feasibility are not relevant while ascertaining the existence of 'debt' and 'default' at the time of admission of the Company Petition.

4.8. Further it is stated that except for making bald allegations of suppression, the Corporate Debtor has not set out the alleged material or facts which have been suppressed by the Petitioner. Hence, the averments are without any basis and are untenable and ought to be rejected.

5. WRITTEN SUBMISSIONS (FC)

The Financial Creditor has relied on the Following Judgements:-

a. Suzlon Synthetics Ltd. v. Stressed Asset Stabilization Fund [Company Appeal (AT) (Insolvency) No. 662-663 of 2022 - NCLAT].

b. Rexel India Pvt. Ltd. v. Proto D Industries Pvt. Ltd. [CP (IB) 417/MB/2025-NCLT Mumbai].

c. M. Suresh Kumar Reddy v. Canara Bank (2023) 8 sec 387

6. WRITTEN SUBMISSION(CD)

6.1. It is stated that the loan documents are inadequately stamped and suffers from legal infirmities. Further no valid Board Resolution, authority letter or corporate authorization has been produced by the Petitioner demonstrating that the alleged transaction was duly authorized and validly executed on behalf of the Corporate Debtor.

6.2. It is stated that the Petitioner has failed to establish actual disbursement of the alleged loan amount. Significantly, during the course of hearing before this Hon'ble Tribunal, the Petitioner itself was directed to place on record additional evidence in the form of bank statements to establish disbursement of the alleged amount. The necessity of such a direction itself demonstrates that the original Petition was deficient and unsupported by primary evidence establishing actual transfer of funds. Mere reliance upon internal ledgers, unilateral records and self- serving statements maintained by the Petitioner cannot constitute proof of disbursement. Unless actual transfer of funds is established through cogent documentary evidence, no financial debt within the meaning of Section 5(8) of the Code can be said to exist.

6.3. It is stated that amount claimed by the Petitioner is itself disputed and unsubstantiated. Petitioner has not place on record any proper statement of account, computation sheet or contractual basis explaining the alleged interest component. In fact, the ledger account relied upon by the Petitioner does not reflect the interest component now sought to be recovered. The alleged outstanding amount is therefore neither crystallized nor established and cannot form the basis for admission of insolvency proceedings.

6.4. It is stated that it is respectfully submitted that the alleged Balance Confirmation has neither been proved in accordance with law nor has the Petitioner established the authority of the person alleged to have executed the same. Mere production of a purported balance confirmation cannot dispense with the requirement of proving the underlying transaction, actual disbursement and enforceability of the alleged debt. The said document therefore cannot be treated as conclusive proof of liability. Further an amount in the books of account or financial statements cannot by itself constitute conclusive proof of a legally recoverable debt or occurrence of default. Financial statements are prepared for statutory reporting purposes and cannot substitute proof of the underlying transaction. The Petitioner is still required to independently establish the existence of a legally enforceable financial debt and occurrence of default through admissible and cogent evidence.

6.5. The NeSL record merely reflects a status of "deemed authentication". The same cannot be equated with adjudication of debt or default and cannot override serious legal objections regarding admissibility, enforceability and proof of the underlying transaction. The Adjudicating Authority is still required to independently satisfy itself regarding existence of debt and occurrence of default. The NeSL record therefore does not cure the fundamental defects in the Petitioner's case.

6.6. The Corporate Debtor has relied on the Following Judgements-

a. Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors., (2019) ibclaw.in 03 SC

b. Vidarbha Industries Power Ltd. v. Axis Bank Ltd., in CIVIL APPEAL NO. 4633 OF 2021

c. Transmission Corporation of Andhra Pradesh Ltd. v. Equipment Conductors and Cables Ltd., CIVIL APPEAL NO. 9597 OF 2018

7. ANALYSIS AND FINDINGS

7.1. We have considered the pleadings in the matter and have heard the Ld. Counsels for the parties.

7.2. On perusal of the documents it is observed that the Applicant sanctioned an unsecured term loan of Rs.1.5 Crore to the Corporate Debtor which was to be repaid within 1 years at annualized Interest Rate of 9.38 % per annum vide sanction letter dated 19.06.2023. Both parties executed the Loan Agreement on 26.06.2023.

7.3. It was also agreed between the parties that the Interest shall be payable at the end of every Financial Quarter. The Corporate Debtor issued 4 post-dated Cheques to the Applicant.

7.4. On perusal of the bank account statement as produced in the Additional Affidavit by the applicant, the funds were disbursed on 26.06.2023. The Applicant has further provided Debit advise issued by ICICI bank which reveals that Rs. 1,50,00,000 was disbursed to Velex Logistic Private Limited via Cheque no.001868 on 26.06.2023.

7.5. It is further observed that Corporate Debtor failed to pay the interest amount as well as the Principal amount within due timeline of 1 year as stipulated in loan agreement. Hence the date of default is 26.06.2024

7.6. The Applicant deposited the post-dated cheques issued by the Corporate Debtor and the same were returned unpaid due to insufficient funds. The Applicant vide Notice dated 22.10.2024 issued Notice of Dishonour of Cheque under the NI Act 1881.

7.7. The date of default as mentioned in NeSL form D is 26.06.2024 and the Status of Authentication of Default is **"DEEMED TO BE AUTHENTICATED**."

7.8. The Corporate Debtor in its reply has not denied the existence of debt, execution of loan agreement or non-disbursal of loan.

7.9. As per the scheme of the Code, at the time of admission this Tribunal shall consider whether the debt is due which is payable and whether the same is under default 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.

7.10. One of the contentions of the Corporate Debtor is qua limitation. As per the loan agreement it was agreed between both the parties that the loan shall be repayable within 12 months of the disbursement. The disbursement being done on 26.06.2023 the due date shall be 26.06.2024. The Corporate Debtor has failed to pay the outstanding amount within the due date and hence the date of default is 26.06.2024.Hence in our view this Application being filed on 03.02.2026 is well within limitation of three years.

7.11. Another contention of the Corporate Debtor is that loan documents is not adequately stamped and no valid Board Resolution has been passed demonstrating that the alleged transaction was duly authorized and validly executed on behalf of the Corporate Debtor. However we note that the Loan agreement was duly signed by the Director of Velex Logistics Private Limited Mr. Yogesh H Patel pursuant to the resolution passed by Board of Director meeting held on 31.03.2023. This Tribunal relies upon the Judgement of Hon'ble NCLAT in **Hiren Meghji Bharani Vs. Shankheshwar Properties Pvt. Ltd. & Anr., [(2023) ibclaw.in 822 NCLAT]** wherein it has been clearly held that the non-stamping of documents does not render CIRP application filed to be non-maintainable when there exists other material on record to prove existence of default in the payment of debt. It is observed that the Applicant has produced Balance sheet for FY 2024-25 of the Corporate Debtor wherein the it is shown that a balance of Rs. 173.26(in lakh) is still due to the Financial Creditor. In this regard note 19 under heading of "Current Borrowings" and sub-heading Non-Banking Financial Institutions Borrowings is relevant. The relevant extract is reproduced hereunder :-

NOTE NO.: 17

OTHER FINANCIAL LIABILITIES - NON CURRENT	As at March 31' 2025	As at March 31' 2024
Interest accrued but not due on ECB borrowings	56.68	56.68
	56.68	56.68

NOTE NO.: 18

PROVISIONS - NON CURRENT	As at March 31' 2025	As at March 31' 2024
Provision for employee benefits		
Gratuity	-	52.34
Leave encashment	-	19.99
	-	72.32

NOTE NO.: 19

BORROWINGS - CURRENT	As at March 31' 2025	As at March 31' 2024
(i) Bank Overdrafts:		
Secured*:		
ICICI Bank	-	2,999.70
HSBC Bank	-	3,527.84
IDFC First Bank	-	2,014.78
(ii) Non Banking Financial Institution borrowings:		
Unsecured:		
PAT Financial Consultants Pvt Ltd	154.61	135.33
Finquest Financial Solutions Pvt Ltd	173.26	159.61
(iii) Current maturities of long term borrowings:		
HDFC Bank Vehicle Loan	6.77	7.41
IDFC ECLGS Term Loan	-	199.83
ICICI Bank ECLGS Term Loan	-	-
	334.64	9,044.50

7.12. As regard the allegation that the debt amount is not crystallised by the Applicant, we are of the view that Applicant has produced sufficient documents including bank statements and Balance Sheet of the Corporate Debtor, which clearly show that the debt is way above the threshold limit of Rs. 1 crore as per Section 4 of the Code. Further it is the IRP/RP who shall determine the actual amount of claim.

7.13. Further ss regard to the simultaneous proceeding of section 7 of the IBC and proceeding under section 138 of Negotiable Instrument Act 1881 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. This Code is a beneficial legislation to revive the corporate debtors and not a mere recovery mechanism, and hence the Applicant has rightly come to this Tribunal not for making recovery but to revive the CD by way of resolution.

7.14. The CD also relies on the judgment of Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 stating that Applicant has misused the provisions of the Code to pressurize the CD. Although, after examining the said judgment it is seen that the Hon'ble Supreme Court has held the following:

> "*12. It can thus be seen that the primary focus of the legislation 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. The Code is thus a beneficia/legislation which puts the corporate debtor back on its feet, not being a mere recovery/legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also*

> *protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."*

7.15. As the Hon'ble Supreme Court has held that the Code is a beneficial legislation to revive the corporate debtors and not a mere recovery mechanism, and hence the Applicant has rightly come to this Tribunal not for making recovery but to revive the CD by way of resolution. Therefore, we are of the view that reliance by the CD on this judgment is misplaced.

7.16. Another contention of the CD is regarding pendency of proceedings u/s 138 of the NI Act. In our considered view the pendency of such proceedings is no bar for the present application.

7.17. The CD also relies on the judgment of Hon'ble Supreme Court in the matter of M/s. Vidarbha Industries Power Limited v Axis Bank {(2022) 8 SCC 352} which in our view does not apply to the facts of this case as the Hon'ble Supreme Court has time and again in its various judgements held that the Judgement of Vidarbha was pronounced keeping in mind the peculiar facts of the case and cannot be held as a precedent. Further at the time of admission, the Adjudicating Authority only needs to ascertain whether debt is due and payable and the same is being defaulted by the Corporate Debtor.

7.18. Further this Tribunal has relied on the matter of **Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors. Civil Appeal No(s). 2211/2024,** wherein the Hon'ble Supreme Court while examining the validity of the admission of the Corporate Debtor to CIRP, has laid down as under :-

> ***B. Validity of CIRP Admission.***
>
> *28. The other aspect on which the Appellant has heavily relied is the acceptance of various sums of money paid by the Corporate Debtor purportedly under the 1st and 2nd restructuring proposals, which according to them amounts to deemed approval of such proposal. As discussed earlier, such argument flies in the face of the fact that the 2nd Respondent had resolutely maintained and rightly so, that the restructuring proposals were underpinned on pre-implementation conditions which the Corporate Debtor had failed to fulfil. Under such circumstances, receipt of various sums of money would not amount to acceptance of the restructuring proposals, thereby novating the earlier loan agreement. Neither would such part payments constitute full satisfaction of the existing debt so as to render the Section 7 application inadmissible.*
>
> *29. It has also been vociferously contended that the Corporate Debtor is an ongoing concern and does not lack the ability to repay the debt. It has a subsisting PPA for 25 years with WBSEDCL, and has raised bills of Rs. 906 crore from 01.11.2024 to 31.03.2025. It also has a continuous fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI scheme and had earned EBIDTA of Rs. 20 crore per month during the CIRP. These facts though attractive at first blush, do not yield either legal or factual justification to rebut the admission of the Section 7 application.*
>
> *30. On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. <u>The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may be initiated. Section 3(12) defines "default" as non payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.</u> Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. "Financial creditor" is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned.26 A "financial debt" means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.27*

"Operational creditor" is defined as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned.28 "Operational debt" is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central or State government, or any local authority.29 31. In Swiss Ribbons (P) Ltd. v. Union of India [(2019) ibclaw.in 03 SC],30 such classification of creditors as financial creditors and operational creditors has been held to be constitutionally valid. The Bench underscored the essential differences between a financial creditor and operational creditor and held that financial creditors were mostly secured creditors like banks and financial institutions who extended finance to enable a corporate debtor to set up and/or operate its business. Such credit is extended to a corporate debtor under well-defined loan agreements having specified repayment schedules and reserving rights to recall the loan in case of default or restructure the same enabling a corporate debtor to tide over unforeseen financial stress. On the contrary, operational creditors are mostly unsecured creditors and their claims are relatable to supply of goods and services in the operation of the business. Ordinarily, operational debts are not based on admitted documents and the possibility of genuine disputes with regard to such debts is much higher compared to financial debts.

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

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 WBSEDCL to the tune of Rs 906 crore and EBITDA of Rs. 20 crore per month during the CIRP.*

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

(emphasis wherever required supplied)

7.19. 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.

7.20. In view of the above , the Applicant has successfully demonstrated the existence of a financial debt , as the transaction involves money borrowed against the payment of interest under section 5(8)(a) of IBC 2016, the occurrence of default, which is way above the threshold as stipulated under Section 4 of the Code , and continuing nature of such default supported by clear documentary evidence.

7.21. Financial Creditor has also proposed the name of an Insolvency Professional (IP) i.e. Ms. Dipti Narayan Mundra, having Registration No. IBBI/IPA-001/IP-P-02845/2023-2024/14366 and Authorization for Assignment (AFA) which is valid up to 31.12.2026 as per IBBI portal, as the proposed IRP and as per the Form 2 attached along with the Application , no disciplinary proceedings are going on against the said IP. Further, this Application is complete as all the required documents have been attached along with the Application. Accordingly, the present Application is fit for admission under Section 7 of the IBC, 2016.

7.22. 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) 99/MB/2026 filed under Section 7 of IBC, 2016, by Finquest Financial Solutions Private Limited ,the Applicant (FC) ,for initiating CIRP in respect of Velex Logistics Private Limited , the Corporate Debtor, is **Admitted.**

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

I. We prohibit:

a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor, including the execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;

b) transferring, encumbering, alienating, or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover, or enforce any security interest created by the Corporate Debtor in respect of its property, including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.

V. That this Bench hereby appoints**,** Ms. Ms. Dipti Narayan Mundra , having Registration No. IBBI/IPA-001/IP-P-02845/2023-2024/14366 and **e-mail address ip.dipti@gmail.com** having valid Authorisation for Assignment up to 31.12.2026 (as per IBBI site) 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, Mumbai Maharashtra, 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 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/-	**Sd/-**
NILESH SHARMA **MEMBER (JUDICIAL)**	**SAMEER KAKAR** **MEMBER(TECHNICAL)**

//Sumant//