NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1 & P2

IA(I.B.C)/779(MB)2026

IN

C.P. (IB)824/(MB)2025

&

C.P. (IB)824/(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **05.08.2026**

NAME OF THE PARTIES**:** **Omkara Assets Reconstruction Private Limited**

Vs

Matoshree Infrastructure Private Limited

Under Section 7 and 60(5) of the IBC

ORDER

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

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//Sumant//

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/824/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]

OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED

[CIN.: U67100TZ2014PTC020363]

No.9 M.P. Nagar, 1st Street,

Kongu Nagar Extension, Tirupur,

Coimbatore, Tamil Nadu - 641607

Also, at: Kohinoor Square, 47th Floor

N.C.Kelkar Marg , R.G. Gadkari Chowk,

Dadar (W), Mumbai- 400028

…Financial Creditor

V/s

MATOSHREE INFRASTRUCTURE PRIVATE LIMITED

[CIN: U45203MH2007PTC173437]

102, Aditi, Sena Bhavan Path, Dadar (W),

Mumbai - 4000028

...Corporate Debtor

and

<u>IA (I.B.C) 779/MB/2026</u>

in

CP (IB) No. 824/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]

MATOSHREE INFRASTRUCTURE PRIVATE LIMITED

…Applicant/CD

V/s

OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED

… Respondent/FC

Pronounced: 05.08.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For FC: Adv. Mr. Charles D'Souza a/w Adv. Aalisha Sharma a/w Adv. Mr. Ibrahim Shaikh i/b Vaish Associates

For CD: Adv. Rohit Gupta, Adv. Mr. Yash Badkur, Adv. Mr. Mithila Damle i/b Actus Lit Parnters

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No. 824 of 2025 (Application) was filed on 01.03.2025 by Omkara Assets Reconstruction Private Limited , the Financial Creditor (FC) having CIN No.: U67100TZ2014PTC020363, 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 Matoshree Infrastructure Private Limited, the Corporate Debtor (CD), having CIN No.: U45203MH2007PTC173437

1.2 This Application has been affirmed by one Mr. Piyush Jain, the Authorised Representative of Omkara Assets Reconstruction Private Limited authorised vide Board Resolution dated 16.07.2024.

1.3 As per Part IV of the Application, the amount claimed to be in default is Rs. 209,72,76,843/- (Rupees Two Hundred Nine Crore Seventy-Two Lakh Seventy-Six Thousand Eight Hundred Forty-Three Only) as on 24.02.2025.

1.4 The date of default is stated as 31.03.2019 with respect to three term loans and 14.09.2021 with respect to the fourth term loan.

1.5 The Applicant has proposed SSARVI Resolution Services LLP through its Authorised Signatory Mr. Prashant Jain, having Registration No. IBBI/IPE-0144/IPA-1/2022-23/50008, to act as the Interim Resolution Professional (IRP) in case the Application is admitted.

2. <u>CONTENTIONS OF APPLICANT (FC)</u>

2.1 It is stated that the Corporate Debtor entered into Development Agreement dated 10.05.2010 with Jeevan Nagar Cooperative Housing Society Limited ("JNCHSL") for giving the Corporate Debtor development rights for redevelopment and construction of new buildings for members (272) of the society on the plot of land situated at Mouze Mulund, District Mumbai, bearing CTS Nos. 1076, 1090. 1085, 1089, 1086, i 1088, 1092 (pt), 1091 (pt.), 1084 (pt.) aggregating to 23, 083. 71 sq. metres. Or thereabouts in village Mulund, Taluka Kurla together with 27 buildings known as "Jeevan Nagar" in JNCHSL.

2.2 Thereafter, the Corporate Debtor approached Housing Development Finance Corporation Limited (HDFC) ("Original Lender") seeking Finance Loan Facility for construction of "Matoshree Nisarg" in the above-mentioned JNCHSL somewhere in July 2013. The Original Lender sanctioned the loan facility of Rs. 35,00,00,000/- (Rupees Thirty-Five Crores Only) vide Sanction Letter dated October 18, 2013 (Loan Account No. 6210189446, the tenure of which was 60 months) ("First Loan"). The Corporate Debtor passed a Board Resolution on November 20, 2013 and a Special Resolution dated December 2, 2013, approving borrowings by the Corporate Debtor for the business of the company up to the limit of Rs. 100 Crores as per Section 180 of the Companies Act, 2013. Subsequently, on December 7, 2013, the Corporate Debtor passed a Board Resolution to avail financial assistance from the Original Lender in the form of Construction Finance to the extent of Rs. 35 crores. Copy of Sanction letter dated 18.10.2013 is annexed as Annexure 5 to the Application.

2.3 In accordance with the terms of the Sanction Letter dated October 18, 2013, the Corporate Debtor executed Master Facility Agreement with Special Conditions dated December 18, 2013 and executed the following documents:

a. Letters of Guarantee dated 18.12.2013 executed by Mr. Ashutosh Gunwant Abhayankar, Mr. Rajan Ganesh Shirodkar, and Mr. Vijay Chintan Yeolekar

b. Escrow Account Agreement dated 12.12.2013 in favour of the Original Lender i.e. HDFC Bank limited for the purpose of establishing an escrow account and designated account with the escrow bank immediately before or after first disbursement on the terms and conditions satisfactory to the Original Lender;

c. Addendum to Escrow Agreement dated December 18, 2013

d. Demand Promissory Note dated 18.12.2013 for Rs. 35,00,00.000/- (Rupees Thirty-Five Crores Only) executed by Corporate Debtor in favour of Original Lenderpromising to pay the sums of Rs. 35,00,00,000/- (Rupees Thirty-Five Crores Only) together with interest thereon at the rate equivalent to HDFC's Corporate Prime Lending Rate ("CPLR") Plus/Minus spread as may be fixed by HDFC from time to time for value received;

e. Unilateral indenture of mortgage executed by the Corporate Debtor in favour of Original Lender on 18.12.2013 Securing the whole of the mortgage debt over the properties as described in schedule 1 .

The Copies of the same are Annexed as **Exhibit 6 to Exhibit 12** to the Application.

2.4 In addition to the existing facilities the Corporate Debtor requested for a further increase in construction finance loan, which was accepted and granted vide sanction letter dated 22.07.2016 thereby, the Corporate Debtor was granted an additional loan amount (Account Number 6210233943) of Rs. 30,00,00,000/- (Rupees Thirty Crores Only) on the terms and conditions as set out therein (hereinafter referred to the "Second Loan"). Approval for obtaining the said loan facilities was given by the board of directors vide Board Resolution dated July 23, 2016. In furtherance of the requirements as stipulated under Sanction Letter July 22, 2016, the Corporate Debtor executed a Master Facility Agreement on August 29, 2016 and the following ancillary documents.

a. Letters of Guarantee dated August 29, 2016 executed by Mr. Ashutosh Gunwant Abhyankar, Mr. Rajan Ganesh Shirodkar, and Mr. Vijay Chintan Yeolekar;
b. Addendum to Escrow Account Agreement dated August 29, 2016;
c. Addendum to Escrow Agreement dated August 29, 2016:
d. Demand Promissory Note dated August 29, 2016 for Rs. 30,00,00,000/- (Rupees Thirty Crores Only) executed by Corporate Debtor in favour of Original Lender promising to pay the sum of Rs. 30,00,00,000/- (Rupees Thirty Crores Only) together with interest thereon at the rate equivalent to HDFC's Corporate Prime Lending Rate ("CPLR") Plus/Minus spread as may be fixed by HDFC from time to time for value received;
e. Unilateral indenture of mortgage dated August 30, 2016 executed by the Corporate Debtor in favour of Original Lender to secure the additional facility of Rs. 30,00,00,000/- (Rupees Thirty Crores Only);

The Copies of the same are Annexed as **Exhibit 13 to Exhibit 20** to the Application.

2.5 In addition to the existing facilities, the Corporate Debtor further requested for an increase in Construction Finance Loan which was accepted and granted vide Sanction Letter dated August 14, 2017 thereby, the Corporate Debtor was granted and additional loan amount (Account number 6210246792) of Rs. 30,00,00,000/- (Rupees Thirty Crores Only) on the terms and conditions as set out therein (hereinafter referred to the "Third Loan"). Approval for obtaining the said loan facilities was given by the board of directors vide Board Resolution dated August 8. 2017. In furtherance of the requirements as stipulated in another Sanction Letter dated August 14. 2017, the Corporate Debtor executed a Master Facility Agreement on September 11, 2017 and the following ancillary documents:

A. Letters of Guarantee dated August 28, 2017 executed by Ashutosh Gunwant Abhyankar; Ranjan Ganesh Shirodkar and Vijay Chintaman Yeolekar;

B. Demand Promissory Note dated September 6, 2017 of Rs. 30,00,00,000/- (Rupees Thirty Crores Only) executed by Corporate Debtor in favour of Original Lender they were promising I to pay the sums of Rs. 30.00.00,000/- (Rupees Thirty Crores Only) together with interest thereon at the rate equivalent to HDFC's Corporate Prime Lending Rate (CPLR) Plus/Minus spread as may be fixed by HDFC from time to time for value received.

C. Unilateral Indenture of Mortgage dated September 6, 2017 executed by the Corporate Debtor in favour of Original Lender to secure the additional facility of Rs. 30,00,00,000/- (Rupees Thirty Crores Only);

The Copies of the same are Annexed **as Exhibit 21 to Exhibit 26** to the Application

2.6 The Corporate Debtor defaulted in the repayment of loan facilities pursuant to availing the first three loans aggregating to Rs. 95,00,00,000/- (Rupees Ninety-Five Crores Only). Accordingly, the Original Lender issued a Demand Notice dated July 24, 2019, upon the Corporate Debtor, thereby intimating the Corporate Debtor of the classification of the loan account as Non-Performing Asset ("NPA") as per the Reserve Bank of India ("RBI") guidelines and demanding the overdue amount payable as of July 24, 2019, which was Rs. 4,14,90,278/- (Rupees Four Crores Fourteen Lakhs Ninety Thousand Two Hundred and Seventy-Eight Only) within 7 days of the receipt of the notice. Therefore, the dates of default for the three loan accounts were March 31, 2019. A copy of the Demand Notice dated July 24, 2019 is annexed as **Annexure 27** to the Application.

2.7 The Corporate Debtor then replied to the Demand Notice vide their letter dated July 27, 2019, thereby recording that the outstanding in the three loan accounts till March 2019 had been cleared and acknowledging the outstanding amount of Rs. 3,18,19,386/- (Rupees Three Crores Eighteen Lakhs Nineteen Thousand Three Hundred and Eighty-Six Only) along with penal interest of 53,23,990 as of June 2019. The Corporate Debtor further recorded that due to slowdown in real-estate industry, they were facing constraints with cash flow. They referred to a letter dated May 9, 2019 where reasons for delay in payments of due interest were explained in detail as also recorded that payment of Rs. 1,74,16,229/- (Rupees One Crore Seventy-Four Lakh Sixteen Thousand Two Hundred Twenty-Nine Only) was made on March 1, 2019 and Rs. 3,25,36,402 (Rupees Three Crore Twenty-Five Lakh Thirty-Six Thousand Four Hundred Two Only) was cleared in June 2019 by bringing in funds out of their own resources in order to standardised their account from NPA. An assurance was given that the loan accounts would be regularized on the basis of the project cash flow.

2.8 On account of the acknowledgment of debt on July 27, 2019, the limitation for initiating legal proceedings was extended until July 26, 2022. The

Corporate Debtor's reply dated July 27, 2019, to the default notice is annexed as **Annexure 28** to the Application.

2.9 Thereafter, the Corporate Debtor requested for an increase in Construction Finance Loan which was accepted and granted vide Sanction Letter dated December 17, 2020 thereby, the Corporate Debtor was granted and additional loan amount (Account No. 6210288390) of Rs 16,51,00,000/- (Rupees Sixteen Crores Fifty-One Lakhs Only) on the terms and conditions as set out therein (hereinafter referred to the "Fourth Loan"). Approval for obtaining the said loan facilities was given by the Board of Directors vide Board Resolution dated 17.12.2020 and 19.12.2020. In furtherance of the requirement as stipulated in the Sanction Letter dated December 17, 2020, the Corporate Debtor executed a Master Facility Agreement on January 22, 2021 and the following ancillary documents:

a. Deed of Guarantee dated January 21, 2021 executed by Ashutosh Gunwant Abhyankar; Ranjan Ganesh Shirodkar and Vijay Chintaman Yeolekar.

b. Demand Promissory Note dated January 22, 2021 of Rs. 16.50 Crores executed by Corporate Debtor in favour of Original Lender they were promising to pay the sums of Rs. 16.50 Crores together with interest thereon at the rate equivalent to HDFC's Corporate Prime Lending Rate ("'CPLR") Plus/Minus spread as may be fixed by HDFC from time to time for value received;

c. Master Accounts Management Agreement · dated January 22, 2021 to record the establishment, operation and administration of the accounts including collection and distribution of the receivables and for matters incidental thereto;

d. Declaration dated January 21, 2021 by Abhijeet Malusare & Co. Company Secretaries, thereby, confirming that the Corporate Debtor is not a subsidiary of a public limited company;

e. Undertaking an indemnity to create security dated January 19, 2021;

f. Letter of Continuity dated January 22, 2021

g. Unilateral Indenture of Mortgage dated February 2, 2021 executed by the Corporate Debtor in favour of Original Lender to secure the additional facility of Rs. 16.50 Crore.

2.10 Furthermore, the debt owed to the Original Lender has been acknowledged by the Corporate Debtor in its annual reports and balance sheets for the financial years 2013-2014 to 2019-2020, thereby extending the limitation period for filing the present proceedings from time to time. Copies of the annual reports and balance sheets for the financial years 2013-2014 to 2019-2020 are annexed as **Exhibit "39" to Exhibit "45**" to the Application.

2.11 Despite the assurances and obligations undertaken by the Corporate Debtor under Clause 4.9 of the Master Facility Agreement dated 01.01.2021, the Corporate Debtor continued to default in fulfilling its repayment obligations under the loan facilities. Consequently, the Original Lender exercising its rights under Clause 10.2 of the said Master Facility Agreement issued a default notice dated 14.09.2021, for existing defaults in all the loan facilities. As per the said notice, the aggregate outstanding amount under these facilities was Rs. 111.15 Crores, with an overdue amount of Rs. 42,29,84,637/- (Rupees Forty-Two Crores Twenty-Nine Lakhs Eighty-Four Thousand Six Hundred and Thirty-Seven Only) as of August 31, 2021. Therefore, the date of default for the Fourth Loan occurred on September 14,2021.

2.12 In response to the default Notice dated 14.09.2021, the Corporate Debtor addressed a letter dated 23.09.2021 thereby recording the fact of execution of Term Sheet dated September 30, 2019, with one Kanakia group for joint redevelopment of Matoshree Nisarg and suggesting steps for "repayment mechanism" and "corrective measures to achieve a solution to all the issues". The Term Sheet explicitly records under Clause 8 that the total outstanding loan payable to the Original Lender as of September 30, 2019, was Rs. 82.56 Crores along with accrued interest of Rs. 6.42 Crores. Further, under Clause D(7) of the Commercial Offer section of the Term Sheet, the Corporate Debtor expressly agreed that after the allocation of revenue share, the existing loan amount of Rs. 82.56 Crores along with the accrued interest would be repaid to the Original Lender. This acknowledgment and commitment unequivocally establish the Corporate Debtor's liability and its undertaking to repay the outstanding dues. On account of this acknowledgment of debt for all four loans on September 23, 2021, the limitation for initiating legal proceedings was extended until September 22, 2024. A copy of the response dated September 23, 2021 along with the Term Sheet dated September 30, 2019 by the Corporate Debtor is annexed **as Exhibit 47 Colly** to the Application.

2.13 Despite multiple requests and reminders, the Corporate Debtor failed to regularize the repayment of all four loan accounts. Consequently, the

Original Lender issued a Recall Notice dated November 7, 2022, to the Corporate Debtor, demanding payment of the entire outstanding dues as of October 31, 2022, amounting to Rs. 145,99,65,710/-. The Copy of recall notice is annexed as **Exhibit 48** of the Application.

2.14 However, no payment was made by the Corporate Debtor despite receipt of the Recall Notice dated November 7, 2022. Therefore, a demand notice dated December 5, 2022 was issued to the Corporate Debtor as well as the Personal Guarantors under the provisions of Section 13(2) of the SARFAESI Act, 2002, by the Original Lender, granting 60 days' time to the Corporate Debtor for repayment of the outstanding dues. In addition, the Original Lender intimated the Corporate Debtor about the issuance of the demand notice through an email dated December 6, 2022. Despite the receipt of the demand notice and the email, the Corporate Debtor neither responded to the notice nor made any payment towards the outstanding dues. Consequently, the Original Lender proceeded to take possession of the secured assets on March 29, 2023, in accordance with the provisions of the SARFAESI Act. The copies of the demand notice dated December 5, 2022, and the email dated December 6. 2022. Are attached as **Exhibit 49** to the Application.

2.15 Subsequently, the Original Lender assigned its loan accounts pertaining to the Corporate Debtor to the Petitioner through a registered Assignment Agreement dated March 31, 2023. By virtue of the said agreement, all rights, title, and interest in respect of the loan facilities were transferred to the Petitioner, in its capacity as trustee of Omkara PS 11/2022-23. Accordingly, the Petitioner is entitled to maintain this Petition against the Corporate Debtor

2.16 As stated above, the limitation period for initiating legal proceedings was extended until September 22, 2024, pursuant to the acknowledgment of debt made by the Corporate Debtor on September 23, 2021. Furthermore, the period between March 15, 2020, and March 31, 2022, was excluded from the computation of limitation by virtue of the Hon'ble Supreme Court's order dated January 19. 2022, in Suo Moto Writ Petition (C) No. 3 of 2020. Since the acknowledgment by the Corporate Debtor occurred during the moratorium period, i.e., on September 23, 2021, the limitation period commenced only after the expiry of the moratorium, i.e., from February 28, 2022. Therefore, taking into account the acknowledgment dated September 23, 2021, and the exclusion of time as directed by the Hon'ble Supreme Court, the limitation period for filing the present Petition would expire on February 28, 2025.

2.17 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) A copy of the Sanction Letter dated October 18, 2013,22.07.2016,14.08.2017 for a loan facility of Rs. 35,00,00,000/- 30,00,00,000/- and 30,00,00,000/- respectively under Loan Account No. 6210189446,6210233943 and 6210246792

c) Copies of the Letters of Guarantee executed by Mr. Ashutosh Gunwant Abhayankar, Mr. Rajan Ganesh Shirodkar, and Mr. Vijay Chintan Yeolekar.

d) Copies of the Master Facility Agreement dated 18.12.2013, 29.08.2016,11.09.2017 executed between the Original Lender and the Corporate Debtor.

e) Copies of the Unilateral Indenture of Mortgage Agreement executed by the Corporate Debtor ill favor of the Original Lender.

f) Copies of Demand Promissory notes

g) A copy of the Demand Notice dated 24.07.2019

h) Copy of the Corporate Debtor's reply dated July 27, 2019, to the default notice July 24,2019.

i) A copy of the Sanction Letter dated December 17, 2020, for a loan facility of Rs 16,51,00,000/- (Rupees Sixteen Crores Fifty-One Lakhs Only) under Account Number 6210288390.

j) copy of the Master Facility Agreement dated January 22, 2021, executed between the Original Lender and the Corporate Debtor.

k) copy of the Financial Statements of the Corporate Debtor for the Financial Year 2013-2014,2014-15,2015-16, 2016-17,2017-18,2018-19,2019-20 as filed with the Registrar of Companies evidencing the financial debt owed to the Original Lender.

l) A copy of the default notice dated September 14,2021.

m) A copy of the recall notice dated November 7, 2022.

n) copy of the demand notice dated December 5, 2022, and a copy of the email dated December 6, 2022.

o) copy of the response dated September 23, 2021 along with the Term Sheet dated September 30, 2019 by the Corporate Debtor.

p) copy of the record of default with the National EGovernance Service Limited (i.e., Form D filed thereto).

q) copy of the Company Master Data of the Corporate Debtor along with Index of Charges as available on the Portal of Ministry of Corporate Affairs as on February 26, 2025.

3. <u>CONTENTIONS OF CD</u>

3.1 Affidavit-in-Reply dated 30.09.2025 was filed and affirmed by one Mr.Shirish Gunwant Sawant, who is stated to be the Director and authorized representative of the CD.

3.2 It is stated that Petitioner itself has contended that the limitation period for filing the Petition has expired on February 28, 2025. It is pertinent to note that the Petitioner has filed the Petition before this Hon'ble Tribunal only on March 1, 2025 (i.e. after expiry of the prescribed period of limitation). Further he has not given any explanation qua filing of the Petition beyond the prescribed period of limitation. In any event, the delay in filing the Petition cannot be condoned under the Limitation Act, 1963. A printout of the case status of the Petition as obtained from the website of this Hon'ble Tribunal is annexed as **Exhibit B** to the Reply. Hence the Application is barred by limitation.

3.3 Petitioner has failed and neglected to produce any Statement of Accounts in relation to the alleged financial facilities availed by the Respondent, to evidence the computation of its claim in the Petition. Further the Petitioner has not produced any documents evidencing the manner in which the Petitioner and / or HDFC has arrived at the alleged amount of Rs. 149,80,00,000 (Rupees One Hundred Forty-Nine Crores and Eighty Lakhs

Only) and / or the period for which the interest is calculated. Therefore, claim of the Petitioner against the Respondent is not substantiated by sufficient documents and thus, the Petition is liable to be dismissed

3.4 Company Petition is not maintainable as the same is not accompanied with the document/s mentioned in Form I of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. As per entry number 7 to Part V of Form I, an application to initiate the Corporate Insolvency Resolution Process against a corporate debtor by a financial creditor is required to be accompanied by 'Copies of entries in a banker's book in accordance with the Bankers Book Evidence Act, 1981 (18 of 1981) However, as set forth above, the claim to the extent of Rs. 149,80,00,000 (Rupees One Hundred Forty-Nine Crores and Eighty Lakhs Only) as on February 28, 2023 is not supported by any Statement of Account maintained by HDFC evidencing the manner in which the said amount was computed. As regards the remainder claim of the Petitioner, the Petitioner has sought to rely on a Statement of Account allegedly maintained by the Petitioner in respect of the account of the Corporate Debtor. The accuracy of the said Statement of Account would necessarily be contingent on the Statement of Account maintained by HDFC. That apart, even the said Statement of Account maintained by the Petitioner is not accompanied by the requisite certificate under the Bankers Books Evidence Act, 1891. Therefore, the financial debt claimed by the Petitioner is not proved in accordance with the IBC and the regulations thereunder. Thus, the above Company Petition is not maintainable and ought to be dismissed.

3.5 Petition is not maintainable as the same does not mention the requisite details sought in Form 1 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (Rules). As per entry number 1 to Part IV of Form I, the Petitioner was required to mention the "Total amount of debt granted and the date(s) of disbursement'. However, instead of setting forth the dates of disbursement for the financial facilities forming the subject matter of the Petition, the Petitioner has only set forth the dates of the agreements allegedly executed in relation to the concerned financial facilities. Further, as is mentioned above, the Petitioner has not even produced the Statement of Accounts maintained by HDFC in respect of the Respondent in order to ascertain the dates of disbursement of the financial facilities to the Respondent. In the absence of the details of disbursements and documents evidencing such disbursements, the Petition cannot be said to be in the format prescribed under the Rules. The Petition is thus liable to be dismissed on this ground as well.

3.6 Further it is stated that Petitioner has produced a copy of Sanction Letters dated October 18, 2013, July 22, 2016, August 2017 and December 17, 2020, in support of its claim against the Respondent in the Petition. A perusal of the Sanction Letters evidences that each of the Sanction Letter records the Term of the concerned financial facility as '60 months from the date of first disbursement'. However, as set forth hereinabove, the Petitioner has neither mentioned the dates of disbursement nor produced the Statements of Account maintained by HDFC in respect of the financial facilities. In the absence of the dates of disbursement, this Hon'ble Tribunal can neither ascertain the commencement and / or expiry of the tenure of each of the financial facilities nor verify the correctness of the dates of default assigned by the Petitioner to such financial facilities. In the absence of such crucial information, the claim of the Petitioner against the Respondent ought not to be entertained.

3.7 It is alleged that the petitioner has produced a Form D (Record of Default) at Exhibit - 51 in support of its claim against the Respondent in the Petition. The Form D records the total sanctioned amount as Rs. 111,51,00,000 (Rupees One Hundred Eleven Crores and Fifty-One Lakhs Only) and the date of default as March 31, 2019. The total sanctioned amount discloses that the Petitioner has filed a consolidated Form C for all the 4 (four) financial facilities that were allegedly availed by the Respondent from HDFC. However, it is pertinent to note that as per the documents produced by the Petitioner, the last financial facility of Rs. 16,51,00,000 (Rupees Sixteen Crores and Fifty-One Lakhs Only) was allegedly sanctioned by HDFC to the Respondent only on December 17, 2020 (i.e. more than 18 months from March 31, 2019). In these circumstances, it is evident that the information provided by the Petitioner in support of its claim against the Respondent is evidently incorrect and the Petition ought to be dismissed on this ground.

3.8 Even with regard to the financial facilities allegedly availed by the Respondent from HDFC in 2013, 2016 and 2017, the date of default is mentioned as March 31, 2019. The Petitioner, in its pleadings, states that the date of default for the said financial facilities was fixed as March 31, 2019, since it is on this date that the account of the Respondent was classified by HDFC as a non-performing asset (NPA). it is settled law that there is a distinction between the date of default and the date of classification of an account as NPA and each of these dates are governed by different regulations. Account is classified as a NPA under the guidelines issued by the Reserve Bank of India only when it stops generating income for the creditor and specifically when the principal or the interest under the account remains overdue for more than 90 days. Thus, the date of default necessarily precedes the date of classification of an account as NPA and these two dates cannot and ought not to be used interchangeably under the Insolvency and Bankruptcy Code, 2016. Petitioner has conveniently ignored the settled position of law and attempted to pass off the date of classification as NPA as the date of default.

3.9 The Petitioner, in Part IV of Form 1 of the Rules has recorded the date of default as September 14, 2021 for the last financial facility allegedly availed by the Respondent from HDFC. A perusal of the documents produced by the Petitioner makes it evident that the date of default for the last financial facility was fixed by the Petitioner as September 14, 2021, based on the notice issued by HDFC to the Respondent on the same date. However, a perusal of the notice dated September 14, 2021, makes it evident that HDFC had granted a period of 7 (seven) days from the date of the notice to the Respondent to regularise its account. Thus, the date of default, if any, can only be fixed after expiry of the 7 (seven) days. The contention of the Petitioner that the date of default for the last financial facility is September 14, 2021 is incorrect. Thus, the above Company Petition ought to be dismissed, as the Petitioner has approached this Hon'ble Tribunal with incorrect facts and to mislead this Hon'ble Tribunal into initiating corporate insolvency resolution process against the Respondent by placing on record incorrect facts.

3.10 The Petitioner has filed the Petition on behalf of Omkara PS 11/2022-23 Trust. Omkara PS 11/2022-23 Trust is allegedly the financial creditor and the Petitioner is a trustee of Omkara PS 11/2022- 23 Trust. The signatory to the Petition being one Mr. Piyush Jain is not authorized to file the Petition on behalf of Omkara PS 11/2022-23 Trust. The Petitioner has contended that the Petition has been filed by the Petitioner in its capacity as the Trustee of Omkara PS 11/2022-23 Trust. However, it is pertinent to note that the Petitioner has produced a Board Resolution dated June 27, 2024, passed by the Petitioner allegedly authorising Mr. Piyush Jain to file the Petition. Upon perusal of the Board Resolution dated June 27, 2024, it is evident that the said Board Resolution has not been passed by the Petitioner while acting in its capacity as the Trustee of Omkara PS 11/2022-23 Trust. There is no document by the Petitioner evidencing that the Petitioner was authorized to further delegate its powers/duties as a Trustee to any individual including Mr. Piyush Jain. In these circumstances, it is evident that the Petition cannot be entertained as the same is not filed by the authorized representative of Omkara PS 11/2022-23 Trust and therefore, is liable to be dismissed in limine.

4. REJOINDER

4.1 The Rejoinder is filed by one Mr. Piyush Jain on behalf of the Applicant on 24.10.2025

4.2 It is stated that the Corporate Debtor has never disputed the existence of the debt or the occurrence of default either in the present Reply or at any time prior to the filing of the captioned proceedings. In fact, the Corporate Debtor has, on multiple occasions, unequivocally acknowledged and admitted its liability in respect of the loan facilities availed as evidenced by its annual financial statements and various letters issued by the Corporate Debtor. Accordingly, the debt and default on the part of the Corporate Debtor stand duly established.

4.3 It is a well-settled position of law that under Section 7 of the IBC the scope of examination by this Hon'ble Tribunal is limited to determining whether a financial debt exists and whether a default has occurred on the part of the Corporate Debtor. In the present case, both these conditions stand conclusively satisfied and are, in fact, admitted by the Corporate Debtor through various correspondence annexed to the Petition. Therefore the objections and contentions raised in the Reply are merely technical devoid of merit and untenable in law.

4.4 Further regarding the contention that the petition is barred by limitation it is stated that Corporate Debtor's loan account was classified as a Non-Performing Asset ("NPA") on March 31, 2019 due to non-payment under the first three loan facilities availed by it. The Corporate Debtor has from time to time acknowledged its liability towards the said debt through its Annual Financial Statements for FY 2013- 2014 to FY 2019- 2020 and by its Reply dated July 27 2019 to the Demand Notice dated July 24 2019.

4.5 It is stated that the Corporate Debtor sought and was granted an enhancement in the Construction Finance Facility vide a Sanction Letter dated December 17,2020 followed by the execution of the Master Facility Agreement dated January 1, 2021. Despite such renewal and assurances, the Corporate Debtor again defaulted in repayment compelling the Housing Development Finance Corporation Limited ("the Original Lender I HDFC") to issue a Demand Notice dated 01.01.2021 which was expressly acknowledged by the Corporate Debtor through its Reply dated 14.09.2021

4.6 Corporate Debtor has also acknowledged its liability towards the Petitioner in its Annual Financial Statements for the Financial Years 2020-2021 (tiled on 14.03.2022), 2021-2022 (filed on December 30. 2022), and 2022-2023. The Financial Statement for FY 2022-2023 was shared with the Petitioner by way of an email dated 11.10.2024. Each of the aforesaid acknowledgments constitute a valid acknowledgment of debt under Section 18 of the Limitation Act, 1963 ("Limitation Act"), thereby extending the period of limitation by further three years.

4.7 Further the Hon'ble Supreme Court by its Suo Motu Orders in Writ Petition (C) No. 3 of 2020, has excluded the period from March 15 2020 to February 28. 2022 from the computation of limitation and granted an additional grace period of 90 days for claims expiring during that time.

4.8 Considering the aforementioned documents and the repeated acknowledgments by the Corporate Debtor under Sections 18 and 19 of the Limitation Act together with the exclusion of time pursuant to the aforesaid Suo Motu Orders there exists a continuing default and continuous acknowledgment of liability thereby keeping the debt alive and the Petition well within limitation. For the sake of completeness, it must be noted that the present Petition was filed on 28.02.2025 is therefore well within limitation as evidenced by the NCLT filing receipt. The same is Annexed as **Exhibit E** of the Application.

4.9 Further the Applicant has listed relevant dates and events for the purpose of calculating Limitation

Sr No	Date	Event	Ref
1.	July 2013 to February 2021	The Corporate Debtor obtained loan of Rs. 111.51 crore from the Original Lender and executed necessary documents.	
2.	29.11.2014	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2013-2014, filed on November 29, 2014.	Ex. 39@Vol-V, Pg. 718 of the Petition.
3.	31.10.2015	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2014-2015, filed on October 31, 2015.	Ex. 40@Vol-V, Pg. 764-765 of the Petition.
4.	05.02.2018	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2015-2016, filed on February 05, 2018.	Ex. 41@Vol-V, Pg. 787-788 of the Petition.

5.	30.03.2018	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2016-2017, filed on March 30, 2018.	Ex. 42@Vol-V, Pg. 830-831 of the Petition.
6.	31.03.2019	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2017-2018, filed on March 31, 2019.	Ex. 43@Vol-VI, Pg. 869-870 of the Petition.
7.	31.03.2019	NeSL record evidencing the date of default.	Ex. 51@Vol-VI, Pg. 1012-1021 of the Petition.
8.	14.11.2019	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2018-2019, filed on November 14, 2019.	Ex. 44@Vol-VI, Pg. 905-906 of the Petition.
9.	24.07.2019	Upon default in repayment of the existing loan facilities by the Corporate Debtor, the Original Lender issued a Demand Notice, thereby calling upon the Corporate Debtor to repay the total outstanding amount of Rs. 4,14,90,278/- as on 20.07.2019, within seven days from the receipt of the Demand Notice.	Ex. 27@Vol-III, Pg. 468-475 of the Petition.
10.	27.07.2019	The Corporate Debtor, *vide* its reply dated 24.07.2019 to the Demand Notice, acknowledged its debt and liability towards the Original Lender and also stated the reasons for the	Ex. 28@Vol-III, Pg. 476-478 of the

11.	11.02.2021	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2019-2020, filed on February 11, 2021.	Ex. 45@Vol-VI, Pg. 941-942 of the Petition.
12.	01.01.2021	Despite the assurance given by the Corporate Debtor under Clause 4.9 of the MRA dated 01.01.2021, the Corporate Debtor defaulted in repayment of the existing loan facilities, compelling the Original Lender to issue a Default Notice under Clause 10.2 of the MRA dated 01.01.2021 for default in repayment of the loan facilities to the tune of Rs. 111.15 crores, with an overdue amount of Rs. 42.29 lakhs.	Ex. 46@Vol-VI, Pg. 961-964 of the Petition.
13.	14.09.2021	The Corporate Debtor replied to the Default Notice dated 01.01.2021, thereby acknowledging the debt, default, and liability in respect of the loan facilities obtained from the Original Lender.	Ex. 47@Vol-VI, Pg. 965-978 of the Petition.
14.	14.03.2022	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2020-2021, filed on March 14, 2022.	Exhibit B herein
15.	28.02.2022	Exclusion of time for the purpose of limitation was allowed by the Hon'ble Supreme Court *vide* an order dated 10.01.2022 in Suo Motu Writ Petition (C) No. 3 of 2020 on account of the COVID-19 pandemic. Accordingly, the period of three years for limitation was to be computed from 01.03.2022.	

16.	30.12.2022	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2021-2022, filed on December 30, 2022.	Exhibit C herein
17.	31.03.2023	An Assignment Agreement was executed between the Original Lender and the Petitioner, whereby the Original Lender transferred, *inter alia*, the aforesaid loan facilities along with all its rights, title, and interest in the Financial Documents and any underlying security interest, pledge, and/or guarantee in respect of such loans in favour of the Petitioner.	
18.	11.10.2024	Acknowledgment of liability by the Corporate Debtor in its Annual Financial Statements for the Financial Year 2022-2023.	Exhibit D (Colly) herein
19.	28.02.2025	Company Petition filed by the Petitioner	Exhibit E herein

4.10 Further it is stated that it is a settled position of law that the benefit of Section 18 of the Limitation Act, on account of acknowledgment of liability, which results in the extension of the period of limitation, is applicable to proceedings initiated under Section 7 of the IBC. In such cases. the relevant date to be considered for computing limitation is the date of the last acknowledgement of debt. It is further settled that entries made in the books or accounts and acknowledgements contained in the financial statements of a company constitute valid acknowledgments under Section 18 of the Limitation Act, thereby extending the limitation period by a further period of three years. Accordingly, the admission of liability in the financial statements or books of accounts. without any qualifying note or reservation. amounts to an unequivocal acknowledgment or debt. leading to an extension of limitation . Therefore, in view of the factual and legal position set out the present Petition has been filed within the prescribed period of limitation.

4.11 With regard to statement of account not been produced by the Applicant it is stated that Petitioner has annexed various documents including but not limited to the Board Resolutions of the Corporate Debtor authorizing the availing of loan facilities from the Original lender, Sanction Letters, Master Facility Agreements, Deeds/Letters of Guarantee, Demand Promissory Notes and the Corporate Debtor's replies to the Demand Notices issued by the Original Lender upon default all executed from time to time. Each of these documents bears the signatures of the authorized representatives of the Corporate Debtor and unequivocally acknowledges the existence of debt and occurrence of default. As set out in the preceding paragraphs of this Affidavit the Corporate Debtor has consistently and repeatedly acknowledged its liability in respect of the said loan facilities and has failed to regularize the outstanding dues despite repeated opportunities.

4.12 Further the Corporate Debtor's own CIBIL report reflects the loan facilities availed from the Original Lender thereby independently evidencing the existence of the financial debt. In any event, the Statements of Accounts maintained by the Original Lender in respect of all four loan facilities availed by the Corporate Debtor up to 31.03.2023 are annexed as **"Exhibit G to Exhibit J**," setting out the total outstanding principal as on 31.03.2023. A summary of the said loan accounts is set out below.

Sr. No.	Loan Facility	Loan Account No.	Total Principal Outstanding as on 31.03.2023
1.	CF – Rs. 35 Crores	6210189446	Rs. 24,28,47,212/-
2.	CF – Rs. 30 Crores	6210233943	Rs. 32,39,75,680/-
3.	CF – Rs. 30 Crores	6210246792	Rs. 32,31,70,319/-
4.	CF – Rs. 16.51 Crores	6210288390	**Rs. 14,23,00,000/-**
		Grand Total	**Rs. 1,03,22,93,211/- (Rupees One Hundred Three Crore Twenty-Two Lakh Ninety-Three Thousand Two Hundred Eleven only).**

4.13 Further it is evident from the above table and the Statements of Accounts that the total principal outstanding amount as on March 31. 2023 receivable from the Corporate Debtor is Rs. 103,22,93,211/- (Rupees One Hundred Three Crore Twenty-Two Lakh Ninety-Three Thousand Two Hundred Eleven only) which clearly meets the statutory threshold for admission or the captioned Petition. In any event. the total amount of Rs. 149.80 Crores as specified in Annexure [to the Assignment Agreement @Pg. 47 of the Petition has been computed based on the various agreements and security documents executed by the Corporate Debtor and the terms and conditions duly accepted by it.

4.14 It is a settled position or law that under Regulation 8(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

Corporate Persons) Regulations 2016 a financial debt may be proved by producing any of the documents specified under sub-regulation (2)(b). Therefore, once the claim of the petitioner is supported by such documentary evidence and the same remains undisputed. There is no requirement to furnish a separate statement of account. Furthermore it is well settled that at the stage of admission of a Petition under Section 7 of the IBC, the Adjudicating Authority is only required to examine (i) whether a financial debt exists and (ii) whether a default has occurred, meeting the statutory threshold. The precise quantification of the debt is not required to be adjudicated at this stage.

4.15 With regard to the objection that copies of entries in the banker's books have not been produced in accordance with the Banker's Books Evidence Act, 1891 it is stated that Petitioner being an Asset Reconstruction Company(" ARC"), is not governed by the provisions or the Banker's Books Evidence Act. 1891. A bare perusal of Section 2 of the said Act makes it evident that it applies exclusively to "banks .Since the Petitioner is an ARC and not a bank, it does not fall within the ambit of the term "bank" as contemplated under the Act. It is pertinent to note that NBFCs and ARCs have not been notified as "banks" under the Banker's Books Evidence Act. as has been consistently held by various Courts and Tribunals.

4.16 The Petitioner has already placed on record comprehensive documentary evidence in support of its claim, including the Statements of Accounts herein for all four loan facilities, which clearly demonstrate that the Corporate Debtor had availed such facilities from the Original Lender. Accordingly. The contention of the Corporate Debtor that the Petitioner has not produced entries in compliance with the Bankers Books Evidence Act, 1891, is misconceived untenable and liable to be dismissed in limine .

4.17 Further with regards to the contention of Respondent that the details mentioned in Form I are incomplete, i.e., the date of disbursement is left blank and that form D produced before this Tribunal is incorrect, it is stated that Reply is nothing but an attempt to delay the proceedings by raising frivolous and technical objections. The Corporate Debtor having admitted the existence of the debt in its Annual Financial Statements, as well as the sanction and disbursement of the loan facilities, cannot now be permitted to oppose the admission of the captioned Company Petition on the untenable ground that the specific dates of disbursement for each of the four loan facilities are not expressly mentioned in the Petition.

4.18 The documents annexed to the Petition, pertaining to the loan facilities availed by the Corporate Debtor together with the Statements of Account annexed as "Exhibit G" to Exhibit J, " clearly reflect the disbursement of the loan amounts and the subsequent default on the part of the Corporate Debtor. Moreover, the omission to mention the exact dates of disbursement is not fatal to a petition under Section 7 of IBC particularly when the supporting documents evidencing disbursement and default are already on record and remain undisputed by the Corporate Debtor. Accordingly, the contention of the Corporate Debtor that the Application is incomplete or liable to be rejected is baseless,misconceived and deserve to be rejected in limine.

4.19 The date of default reflected in the NeSL Record of Default has been recorded on the basis of the NPA classification date, i.e., March 31, 2019, which uniformly applies to all loan facilities availed by the Corporate Debtor. In this regard. Clause 4.5.2 of the RBI Master Circular on Prudential Norms on Income Recognition. Asset Classification and Provisioning stipulates that "when only one facility to a borrower becomes a problem credit and not others, all facilities granted by a bank to that borrower ,must be related as NPAs, not just the specific facility or part thereof that has become irregular." Accordingly. the date of default for all the loan facilities, as correctly recorded in the NeSL report, is 31.03.2019. In any event the sequence of events and consistent acknowledgements by the Corporate Debtor have been set forth in detail above which more than adequately establishes the undisputed debt and default on the part of the Corporate Debtor.

4.20 It is a settled position of law that a petition under Section 7 of the IBC cannot be dismissed on hyper-technical or procedural grounds, particularly when the occurrence of default is duly evidenced by the Record of Default maintained by the Information Utility and corroborated by contemporaneous documents. In any event the Corporate Debtor,through various correspondence, acknowledgments and audited financial statements, has unequivocally admitted the existence of the financial debt and the occurrence of default, and therefore, cannot be permitted to raise a contrary plea at this stage.

4.21 Further it is stated that for the purposes of proceedings under Section 7 of the IBC, the date of default recorded in Form D and authenticated by the information Utility constitutes conclusive proof of the existence and occurrence of default. Accordingly. the contention of the Respondent that the Petition deserves to be dismissed on account of the alleged incorrect date of default is wholly untenable, misconceived, and liable to be rejected in limine.

4.22 With regards to the contention that the date of default mentioned in the Petition is taken as the NPA date, which is not permissible under settled law it is stated that the date of NPA. i.e. 31.03.2019, has been taken as the date of default in the circumstances aforementioned . Even if the date of default is taken as 90 days prior to the date of classification of the account as an NPA, it is evident from the documents annexed to the Petition and referred to herein that the Corporate Debtor, from the inception of the first loan facility until the filing of the present Petition has consistently and repeatedly acknowledged its liability in its audited financial statements for the financial years 2013-2014 to 2021-2022, as set out in the table above. The default has continued uninterruptedly up to 05.12. 2022. being the date of the last demand notice recalling the entire loan amount, on the basis of which the present Petition came to be filed.

4.23 Further for the purpose of indicating the date of default" in a Section 7 application is solely to determine the limitation period for filing the Petition under the IBC. In the present case, the Corporate Debtor has, from the inception of the loan facilities, consistently acknowledged its liability and default through various written correspondence, replies to demand notices, and disclosures in its audited financial statements. Accordingly, the limitation period stands validly extended in terms of Section 18 of the Limitation Act 1963.

4.24 Furthermore, the Petition is in strict consonance with the settled law that where the default is continuous and acknowledgments are made from time to time. the debt remains live and enforceable within limitation. Accordingly. there is no defect or infirmity in the Petition on this account. The contention of the Corporate Debtor that the Petition is based on an impermissible or incorrect date of default is wholly untenable and deserves to be rejected in Limine. The Petition, being complete in all respects and supported by cogent documentary evidence. merits admission under Section 7 of the IBC.

4.25 It is specifically denied that the Board Resolution annexed at pages 75- 76 of the Petition does not authorize Mr. Piyush Jain to file the present Petition on behalf of Omkara PS 11 2022-23 Trust. It is evident from the Assignment Agreement dated 31.03.2023 annexed to the Petition as Exhibit-I. that the Petitioner Omkara Asset Reconstruction Private Limited (also acting in its capacity as Trustee of the Omkara PS 11/2022-23 Trust) is fully entitled to initiate and prosecute these proceedings. The Board Resolution annexed to the Petition as Exhibit-2 clearly authorizes the Board of Directors to empower officers of the Company to sign seal, execute and deliver all necessary applications, petitions, affidavits and other documents before any Court, Tribunal or Authority in connection with the business and affairs of the Company) Trust.

4.26 Further Under Clause (d) of the said Resolution, Mr. Piyush Jain has been specifically authorized to appear before this Hon'ble Tribunal to affirm pleadings on oath and to perform all acts, deeds, and things necessary for safeguarding the interests of the Company/Trust. Accordingly, the said Resolution constitutes a valid and sufficient authorization to institute the present Petition under Section 7 of IBC.

4.27 In this regard reliance is placed on the judgment of the Hon'ble Supreme Court in Rajendra Narottamdas Sheth & Anr. v. Chandra Prakash Jain & Anr., (2022) 5 SCC 600, wherein it was held that a duly authorized officer of an Asset Reconstruction Company, is competent to file a Section 7 application, and a Board Resolution empowering such officer constitutes sufficient authorization in law. Hence. the objection of the Corporate Debtor regarding the alleged lack of authorization is wholly misconceived. baseless, and liable to be rejected in limine.

4.28 The Applicant has relied on the following documents in the Rejoinder-:

a. Copy of Annual Financial Statement FY 2020-21,2021-22,2022-23
b. Copy of CIBIL report of Corporate Debtor
c. Copy of statement of Accounts 620189446,6210233943,6210246792 and 6210288390

5. **ADDITIONAL AFFIDAVIT (Respondent)**

5.1 The Applicant filed an Additional Affidavit dated 20.01.2026 , affirmed by Mr. Shirish Gunwant Sawant , who is stated to be the Director of the Respondent and has brought on record certain additional documents.

5.2 The Applicant has filed this Additional Affidavit solely for the purpose of bringing on record, a copy of the Demand Notice dated December 12, 2025, issued by the Petitioner purporting to be a notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 (Notice).

5.3 It is stated that Respondent has allegedly availed 4 (four) financial facilities from HDFC Limited (HDFC). In ordinary circumstances, the date of default and the date of classifying an account as 'Non-Performing Asset' (NPA) can be different but in the facts of the above Company Petition, the Petitioner itself has stated that the alleged date of default is March 31, 2019 (i.e. the date on which the account of the Respondent was allegedly classified as NPA).

5.4 Thus, the entire Company Petition proceeds on the basis that the Respondent has allegedly defaulted in repaying the outstanding dues under the financial facilities on March 31, 2019. However, it is pertinent to note that the Petitioner has issued the Notice, in respect of the very same transactions, purporting to be a notice under Rule 7 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to Mr. Ashutosh G. Abhyankar which explicitly states that the default allegedly committed by the Respondent in March 2019 was regularized and the accounts of the Respondent were standardized by the Petitioner. A copy of the Demand Notice dated December 12, 2025, issued by the Petitioner to Mr. Ashutosh Abhyankar (without the annexures) is annexed as **Exhibit A.**

5.5 Thus, even assuming without admitting that the Respondent had committed a default on March 31, 2019, the same was duly regularized as per the Petitioner.

5.6 The sequence of events as recorded by the Petitioner in the above Company Petition further fortifies the aforesaid position. The Petitioner has alleged that the Respondent availed the 4^{th} financial facility from HDFC in 2020. A perusal of the Master Facility Agreement dated January 22, 2021 makes it evident that the Petitioner has obtained, from the Respondent, undertakings stating that no events of default whatsoever committed, if any, by the Respondent were subsisting as on the date of executing the loan documents in respect of the 4th facility. Thus, it is evident that the alleged default committed by the Respondent forming the subject matter of the above Company Petition does not exist.

5.7 The Notice was issued by the Petitioner to Mr. Ashutosh G. Abhyankar only on December 24, 2025, and as such, the same could not have been produced by the Respondent in its Affidavit in Reply dated September 30, 2025. The Notice goes to the root of the above Company Petition in as much as it evidences that the default forming the subject matter of the above Company Petition does not exist and the dates of default mentioned by the Petitioner are incorrect.

6. REPLY TO ADDITIONAL AFFIDAVIT (APPLICANT)

6.1 Affidavit-in-Reply dated 16.02.2026 was filed and affirmed by one Mr. Piyush Jain, who is stated to be the authorized representative of the Applicant.

6.2 It is stated that a letter dated December 12, 2025 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, to the Personal Guarantor of the Corporate Debtor (i.e. Mr. Ashutosh Abhyankar). The said letter dated December 12, 2025 inadvertently stated as follows:

> *"Notably, the Corporate Debtor made certain payments pursuant to which the aforementioned defaults were regularized and the* account of the Corporate Debtor came to be standardized .... "

6.1. This statement was factually incorrect. Further, the said letter dated December 12, 2025 also contained certain other inadvertent omissions. In these circumstances, the letter dated December 12, 2025 was withdrawn by the Petitioner vide a letter dated January 23, 2026. The aforesaid withdrawal letter was duly dispatched through India Post bearing Article No. EA41325317IN and was delivered to Mr. Ashutosh Abhyankar on January 27, 2026. A copy of the withdrawal letter dated January 23, 2026 issued by the Petitioner to the Personal Guarantor of the Corporate Debtor, along with the Speed Post receipt and delivery report evidencing due delivery, are annexed marked as Exhibit **"B (Colly.)"**

6.2. it is once again clarified that the account of the Corporate Debtor was classified as a Non-Performing Assets on March 31, 2019 and the same was not regularized / standardized thereafter. Further, since the letter dated December 12, 2025 has been withdrawn, the same cannot have any bearing in the present matter.

6.3. Thereafter, the Petitioner has also issued Fresh Demand Notice dated 11.02.2026, under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019, to the Personal Guarantor of the Corporate Debtor (i.e. Mr. Ashutosh Abhyankar). The aforesaid Fresh Demand Notice dated 11.02.2026 duly dispatched through India Post bearing Article No. EM88257I595IN and was delivered to Mr. Ashutosh Abhyankar on February 13, 2026. A copy of the Fresh Demand Notice dated February 11, 2026, issued by the

Petitioner to Mr. Ashutosh Abhyankar along with the Speed Post receipt and delivery report evidencing due delivery, are annexed marked as **Exhibit "C (Colly.)".**

6.4. It is stated that fresh Demand Notice issued to Mr. Ashutosh Abhyankar was delivered only on February 13, 2026, the present Affidavit in Reply is being filed at the earliest possible opportunity. Any delay, if perceived, in filing the present Affidavit is neither deliberate nor intentional and is occasioned solely on account of the circumstances mentioned above. The Petitioner therefore prays that the present Affidavit be taken on record and any delay, if any, be condoned in the interest of justice.

7. <u>SHORT SYNOPSIS and ADDITIONAL WRITTEN SUBMISSIONS (FC)</u>

7.1. The Applicant has raised the following points for admission of the CD into CIRP

a. Acknowledgement of debt by the CD.

b. Debt and default stand conclusively established.

c. No bar for withdrawal of demand notice and issuance of fresh notice for personal guarantor.

d. Subsequent lending does not extinguish a Pre-Existing Default as in terms of Section 22 of the National Housing Bank Act, 1987, the validity and enforceability of loans and advances granted by housing finance institutions are statutorily protected. In any event, the additional disbursement is not disputed by the CD, and even independent of the fourth loan facility, the debt and default under the remaining loan accounts exceed the statutory threshold of Rs.1 crore under the IBC. The remaining objections raised by the CD are hyper-technical and irrelevant to proceedings under Section 7 of the IBC, where the enquiry is confined to the existence of a financial debt and default, both of which stand conclusively established

e. Alleged regularisation of earlier accounts is unsupported by any evidence

f. Disbursement and utilisation of loan facilities are admitted and undisputed

g. The Defence Raised by the CD is collateral and beyond the scope of Section 7 Proceedings

h. Debt and Default exist even assuming the CD's entire case is accepted

i. Conclusive proof of default via uncontested NeSL Communication

j. CD has not demonstrated that the 4th loan was in breach of any RBI Circular/Guidelines as The CD has not relied upon any RBI circular/guidelines which prohibited the Original Lender from sanctioning the fourth loan. Absent-cogent evidence from the CD, such a contention cannot be entertained more particularly when the present CP doesn’t encompass the adjudication of the validity of the financial transaction and the threshold criteria of Rs. 1 core is even otherwise satisfied from the other 3 loans which are admittedly in default.

k. It is also stated that the HDFC Ltd., vide its letter dated 24th July 2019 (Refer to Exh. 27 @ Page Nos. 468-475-Vol.III), had issued a formal notice of default to CD in respect of Facility 1, 2 and 3, aggregating to an amount of Rs. 95 crore. The said communication expressly recorded that, in accordance with the applicable guidelines of the National Housing Bank, the CD's account had been classified as a NPA. In view of the foregoing, it is untenable for the CD to contend that they were not aware of such NPA classification in the year 2019, particularly when the same had been unequivocally communicated through the aforesaid default notice.

l. The Present Petition satisfies all Requirements of section 7 of the IBC

m. Further it stated that the reliance placed by the Corporate Debtor on Royal Construction v. Gannon Dunkerley & Company Limited, Company Appeal (AT) (Insolvency) No. 393 of 2025, is misplaced as the same came to appeal as the issue arise in that is Section 9 of the IBC and was dismissed on account of the existence of a pre-existing dispute and the bar contained under Section 10A of the IBC.

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

a. Laxmi Pat Surana v. Union Bank of India
b. Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components P. Ltd
c. IL & FS Financial Services Ltd. v. Adhunik Meghalaya Steels (P) Ltd
d. A.R.C. (I.) Ltd. v. Tulip Star Hotels Ltd.
e. Shrem Residency (P) Ltd. v. Shraman Estates (P) Ltd.
f. Canara Bank v. Karanja Terminal & Logistics Pvt. Ltd.
g. BDH Industries Ltd. v. Mars Remedies (P) Ltd
h. SREI Infrastructure Finance Limited vs. Supreme Infrastructure Bot Private Limited

i. Manmohan Singh Jain v. SBI

j. Rajendra Narottamdas Sheth v. Chandra Prakash Jain

k. Innoventive Industries Ltd. v. ICICI Bank

8. SHORT SYNOPSIS and ADDITIONAL WRITTEN SUBMISSIONS (CD)

8.1. The Corporate Debtor has contended the following issues.

a. Non-existence of default, if any, that allegedly occurred in March 2019

b. Inconsistent dates of default and incorrect Record of Default:

c. The veracity of the dates of defaults cannot be ascertained

d. CP is filed without any authority

e. There was subsisting default in March 2019, still a fresh sanction letter dated December 17, 2020 was granted which clearly goes to show that the previous defaults, if any, committed by the CD were either waived or restricted by virtue of a fresh sanction.

f. A brief perusal of the Master Facility Agreement dated January 22, 2021 contradict the stand of the FC. In the said Master Facility Agreement dated January 22, 2021 HDFC had obtained from the CD, a confirmation that,

'8.11 (a) No other event or circumstances is subsisting which constitutes (or with the giving of notice, lapse of time, determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing, might constitute) a Default under any document which is binding on the Borrower or any of its assets'

g. The Master Facility Agreement also states that 'Any indebtedness of the Borrower / Security Provider to the Lender under any other borrowings, is not paid when due' shall constitute an Event of Default under the Master Facility Agreement dated January 22, 2021.(v) Further, the CD had, in order to secure the 4th financial facility, executed a Deed of Mortgage dated January 22, 2021 in favour of HDFC which contemplates that in the event of default, HDFC would be entitled to enforce the mortgage and further even provides the consequences of an event of default. Therefore, it is sufficiently clear that there was no default at the stage of execution of these documents contrary to what is sought to be canvassed in the Petition. If a default had already occurred and was subsisting since March 2019, the aforesaid clauses would not have been inserted by HDFC.

h. The case that there was no default at the said time is also evident from the notices issued by HDFC at the relevant stage. The default notice dated September 14, 2021 (@Pg. 961, Vol. 6 of CP), clearly records that there was no principle overdue in respect of the first 3 loans. It further evidences that the amount allegedly overdue on August 31, 2021 was only Rs. 42.29 crores and not the entire outstanding dues under the 4th financial facilities. HDFC evidently had called upon the CD to pay even at that stage in the year 2021, only the overdue amount of Rs. 42.29 crores. The notice reads as follows – "although we requested you to regularize the said Loan Accounts on numerous occasions" "We hereby call upon you to pay us the above-mentioned Overdue Amount within seven days of this notice with further interest" "We also call upon you to provide us, your plan of action to regularize the captioned loan accounts". If the account of the CD was NPA on March 31, 2019 and was in default then, the question of regularizing the loan accounts does not arise at all. The request of HDFC to regularise the account itself goes to show that the accounts of the CD were not classified as NPA.

i. In fact, the 13 (2) Recall Notice thereafter issued on November 7, 2022 for the first time recorded that there are principal amounts outstanding which have become due and payable and therefore it is at that stage the amounts claimed to be in default in the Petition were called upon by HDFC / FC to be paid by the CD. This fact is further borne out from the letter dated February 11, 2026. In the statutory notice dated February 11, 2026 (@Pg. 12 to Affidavit in Reply dated. February 16, 2026), the FC has specifically recorded as under.

> *"10. The Corporate Debtor continued to default in its financial obligations under the Facility I, Facility II and Facility III.*
>
> *11.Thereafter, the Corporate Debtor approached HDFC with a request for additional financial assistance. By a sanction letter dated December 17, 2020, HDFC sanctioned financial assistance of Rs. 16,51,00,000….."*

j. This letter dated February 11, 2026 is a clear admission of the fact that though there was default but there was a subsequent restructuring as well. The aforesaid cannot be a typographical error or any error which has crept in due to inadvertence. There is a clear admission of the fact what is stated by the CD is true and correct.

k. The FC at the time of arguments has contended that while the date of default for the 4th facility is September 14, 2021, the date on which account was classified as NPA is March 31, 2019. Such a stand is simply taken to somehow justify the Form D produced by the FC. If the FC's submission is to be accepted, the same would lead to an absurdity such that the account which was sanctioned in December 2020 and disbursed in January 2021, according to the FC, has become NPA on March 31, 2019.

8.2. The CD has relied on the following judgement;-

a. Royal Construction v. Gannon Dunkerley & Company Limited Company Appeal (AT) (Insolvency) No. 393 of 2025.

9. <u>IA/779/(MB)2026</u>

9.1. The present Interlocutory Application (I.A.) bearing IA/779/(MB)2026 was filed on 20.02.2026 by the Applicant named Matoshree Infrastructure Private Limited (who is the Respondent in C.P. 824/2025), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC"), seeking the following reliefs: -

a. "Direct the Respondent to produce on its own or through Housing Development Finance Corporation Limited (now HDFC Bank), the internal approval note approving the sanction of a loan facility of Rs. 16,51,00,000 (Rupees Sixteen Crores and Fifty-One Lakhs Only) to the Applicant vide the alleged Sanction Letter dated December 17, 2020;

b. Direct the Respondent to disclose on oath, the name of the individual / officer of Housing Development Finance Corporation Limited (now HDFC Bank) who approved the sanction of a loan facility of Rs. 16,51,00,000 (Rupees Sixteen

Crores and Fifty-One Lakhs Only) to the Applicant vide the alleged Sanction Letter dated December 17, 2020;

c. *Summon and enforce the attendance of Mr. Piyush Jain and / or the individual / officer of Housing Development Finance Corporation Limited (now HDFC Bank) who approved the sanction of a loan facility of Rs. 16,51,00,000 (Rupees Sixteen Crores and Fifty-One Lakhs Only) to the Applicant vide the alleged Sanction Letter dated December 17, 2020;*

d. *Direct the cross-examination of Mr. Piyush Jain, the authorised representative of the Respondent who has affirmed the Affidavit in Reply dated February 16, 2026, filed by the Respondent in Company Petition No. 824 of 2025;*

e. *Upon examining and concluding that the information mentioned by the Respondent in Company Petition No. 824 of 2025 is false, punish the Respondent in accordance with Section 75 of the Insolvency and Bankruptcy Code, 2016;*

f. *Dismiss Company Petition No. 824 of 2025 filed by the Respondent against the Applicant before this Hon'ble Tribunal; and*

g. *Such other and further reliefs as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."*

9.2. It is stated that the defences of the Applicant to the Section 7 Petition is that the alleged default forming the subject matter of the Section 7 Petition did not exist or was duly rectified by the Applicant. Pertinently, during the pendency of the Section 7 Petition, the Respondent issued a Demand Notice dated December 12, 2025, to Mr. Ashutosh Abhyankar purporting to be a notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 (Notice) in respect of the very same transactions forming the subject matter of the Section 7 Petition. The Respondent, in the Notice, explicitly stated that,

8. Owing to the defaults committed by the Corporate Debtor, the account of the Corporate Debtor came to be classified as a Non-performing Asset ("NPA"). In view thereof, HDFC addressed a default notice dated July 24, 2019 to the Corporate Debtor.

9. Notably, the Corporate Debtor made certain payments pursuant to which the aforementioned defaults were regularized and the account of the Corporate Debtor came to be standardized. (Emphasis supplied)

9.3. Upon receipt of the Notice, the Applicant, sought liberty of this Hon'ble Tribunal to place on record the Notice fortifying the contentions raised by the Applicant, which liberty was granted by this Hon'ble Tribunal vide an Order dated January 21, 2026 passed in the Section 7 Petition. Accordingly, the Applicant filed an Additional Affidavit dated January 20, 2026, placing on record, the Notice, in the Section 7 Petition.

9.4. It is stated the Respondent addressed a letter dated January 23, 2026 (received by Mr. Ashutosh Abhyankar only on January 27, 2026) withdrawing the Notice and further stating that the default allegedly committed by the Applicant in March 2019, was never rectified and the same subsists as on date as well. The letter dated January 23, 2026, issued by the Respondent has now been placed on record in the Section 7 Petition by the Respondent vide an Affidavit in Reply dated February 16, 2026, executed by one Mr. Piyush Jain.

9.5. However, the Applicant submits that it is unclear whether the allegations / facts mentioned by the Respondent in the Section 7 Petition are true and correct or the allegations / facts mentioned in the Notice. The Applicant submits that the veracity of the allegations / facts mentioned by the Respondent in the Section 7 Petition, particularly that the Applicant has allegedly committed default on March 31, 2019 in repaying the financial facilities allegedly availed from HDFC, is doubtful since the said allegation is inconsistent or even contrary to the documents produced by the Respondent as well as the information mentioned by the Respondent in the Section 7 Petition.

9.6. The Applicant submits that the sequence of events recorded by the Respondent in the Section 7 Petition fortifies the stand taken by the Applicant that the event of default that allegedly occurred in March 2019, does not exist. It is the case of the Respondent that HDFC sanctioned the 4th financial facility to the Applicant vide a Sanction Letter dated December 17, 2020, issued by HDFC in favour of the Applicant (annexed as Exhibit - 29 to the Section 7 Petition). However, it is also the case of the Respondent that the accounts of the Applicant with regard to the first 3 financial facilities were defaulted upon by the Applicant in 2019 and the same were allegedly classified by HDFC as Non-Performing Assets (NPA) on March 31, 2019. Thus, if the contentions of the Respondent are to be believed, it is stated in the

Section 7 Petition that while the accounts of the Applicant continued to be classified as NPA, HDFC, for reasons best known to it, sanctioned a further 4th financial facility of Rs. 16,51,00,000 (Rupees Sixteen Crores and Fifty-One Lakhs) to the Applicant. The Applicant submits that it is unbelievable that a financial institution, of a stature of HDFC, would agree to grant further borrowings to an entity whose then subsisting accounts with HDFC were classified as NPA. Needless to state, such a practice by any financial facility would not be considered to be in line with prudent banking practises and / or even the guidelines issued by the Reserve Bank of India in that regard.

9.7. However, a brief perusal of the documents produced by the Respondent in respect of the 4th financial facility, further contradict the stand taken by the Respondent in the Section 7 Petition. It is alleged that the 4th financial facility was disbursed on the terms and conditions set forth in the Master Facility Agreement dated January 22, 2021 executed between HDFC and the Applicant. It is pertinent to note that by the Master Facility Agreement dated January 22, 2021, the Respondent has obtained from the Applicant, a confirmation that,

8.11 (a) No other event or circumstances is subsisting which constitutes (or with the giving of notice, lapse of time, determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing, might constitute) a Default under any document which is binding on the Borrower or any of its assets'.

9.8. Further, the Master Facility Agreement also states that Any indebtedness of the Borrower / Security Provider to the Lender under any other borrowings, is not paid when due shall constitute an Event of Default under the Master Facility Agreement dated January 22, 2021. Thus, from a perusal of the terms and conditions of the Master Facility Agreement dated January 22, 2021, it is sufficiently evident that the Applicant was not in default at the time of the alleged sanctioning of the 4th financial facility by HDFC to the Applicant.

9.9. Additionally, as is already mentioned in the Reply dated September 30, 2025 filed by the Applicant to the Section 7 Petition, the veracity of the dates of default assigned by the Respondent to the 4th financial facilities allegedly availed from HDFC cannot be ascertained. As per the documents produced by the Respondent, these 4 financial facilities had a tenure of 60 months from the date of the first disbursement. However, the Respondent has not mentioned the dates of disbursement for the financial facilities in order to enable the Hon'ble Tribunal to ascertain the veracity of the dates of default fixed by the Respondent.

9.10. Even otherwise, in ordinary circumstances, the date of default and the date of classifying an account as NPA can be different but in the facts of the Section 7 Petition, the Respondent itself has stated that the alleged date of default is March 31, 2019 (i.e. the date on which the account of the Applicant was allegedly classified as NPA). However, the date of default necessarily precedes the date of classification of an account as NPA since an account is classified as NPA only when the same has remained overdue for more than 90 days. Therefore, the Respondent submits that the date of default with regard to the financial facilities allegedly availed from HDFC in 2013, 2016 and 2017 is incorrectly recorded by the Petitioner.

9.11. Even with regard to the alleged 4th financial facility availed from HDFC, the Respondent has produced a Form D (Record of default) in support of its claim which records the total sanctioned amount as Rs. 111.51 crores and the date of default as 'March 31, 2019'. The total sanctioned amount discloses that the Respondent has filed a consolidated Form C for all the 4 (four) financial facilities that were allegedly availed by the Applicant from HDFC. However, the 4th financial facility of Rs. 16.51 crores were allegedly sanctioned by HDFC to the Respondent only on December 17, 2020 (i.e. more than 18 months from March 31, 2019). That apart, as per Part-IV of the Section 7 Petition, the date of default for the said facility is fixed as ''September 14, 2021'. However, as per the notice dated December 5, 2022 issued by the Respondent and the Record of Default produced, the date of default is mentioned as March 31, 2019. Therefore, the statements made by the Respondent are contradictory and unreliable

9.12. In view of the foregoing, the Applicant is constrained to file the present Interlocutory Application seeking orders from this Hon'ble Tribunal to direct production of certain documents by the Respondent and to cross-examine the representatives of the Respondent and the Applicant to test the veracity of the statements set forth in the Section 7 Petition.

9.13. The Applicant submits that while in ordinary circumstances this Hon' ble Tribunal would not undertake the exercise of cross-examining witnesses or directing production of any document by a party in a proceeding under the IBC, however, such a power is explicitly conferred on this Hon'ble Tribunal under Section 424 of the Companies Act, 2013.

9.14. In the facts and circumstances mentioned herein above, the Applicant submits that it has become of utmost importance that the documents produced, and statements made, by the Respondent are not taken at face value but the veracity of the same is tested. The fact that the alleged default committed by the Applicant was duly rectified, was correctly mentioned by the Respondent in the Notice, however, it appears that the Notice was withdrawn simply because the same was placed on record, in the Section 7 Petition, as being contradictory to the stand taken by the Respondent herein. It is thus unclear whether the facts / allegations mentioned by the Respondent in the Section 7 Petition are to be taken as true and correct or the facts / allegations mentioned by the Respondent in the Notice are to be relied upon.

9.15. The Applicant submits that the purpose of filing this Interlocutory Application is to test the veracity of the facts / allegations mentioned by the Respondent and also, to bring the true and correct facts on record, simply with an intention to serve the ends of justice. The Applicant submits that this Hon'ble Tribunal is guided by the principles of natural justice while deciding the proceedings before it. The principles of natural justice mandate that each party ought to be granted sufficient opportunity to not only have their say but also to lead evidence in support of the same

9.16. The Applicant submits that the facts and circumstances surrounding the sanction of the 4th financial facility by HDFC cannot be proved by the

Respondent / the officer of the Respondent but can be proved, only basis the documents maintained by HDFC and by the officer of HDFC who allegedly sanctioned the 4th financial facility to the Applicant. Thus, the Applicant submits that there is a necessity to cross examine, not only Mr. Piyush Jain, the officer of the Respondent who has deposed to the Affidavit in Reply dated February 16, 2026, but also the concerned officer of HDFC who has allegedly sanctioned the 4th financial facility to the Applicant.

9.17. The Applicant submits that in the absence of the cross - examination of the officer of HDFC and the Respondent, the statements made by the Respondent in its pleadings are contradictory and unreliable and that the Hon'ble Tribunal cannot be expected to decide the proceedings conclusively without testing the veracity of the statements made by the Respondent.

9.18. In the event the present Interlocutory Application is not allowed, there is an imminent risk that the statements made by the Respondent, though contradictory and inconsistent, will be taken as true and correct and the Section 7 Petition will be decided on the basis of such contradictory and inconsistent statements. Such an eventuality is highly undesirable to the Applicant and would cause grave harm, loss and prejudice to the Applicant. On the contrary, if the present Interlocutory Application is allowed, the Hon'ble Tribunal will only be certain of the veracity of the facts / allegations mentioned in the Section 7 Petition and the same can then be decided accordingly

9.19. The Applicant however submits that upon cross-examination, if this Hon'ble Tribunal concludes that the statements made by the Respondent, in the Section 7 Petition are false, the Applicant humbly prays that the Respondent be punished for making such false statements in accordance with Section 75 of the IBC.

10. <u>Reply to the IA</u>

10.1. The Affidavit in Reply is filed by Mr. Piyush Jain (Authorised Representative of the Applicant) on 20.04.2026

10.2. It is stated that the present Application is nothing but a gross abuse of the process of this Hon'ble Tribunal. Save and except a purported subsequent event relating to the Personal Guarantor Demand Notice dated December 12, 2025 and an alleged inadvertent error therein, the Application raises no new grounds whatsoever. The entire Application is a verbatim repetition and re-agitation of contentions already raised by the Corporate Debtor in its Affidavit in Reply dated September 30, 2025 ("Reply") to the captioned Company Petition, which have been conclusively dealt with and rebutted in the Financial Creditor's Affidavit in Rejoinder dated October 24, 2025 ("Rejoinder"). Further, the alleged subsequent event, even if assumed without admitting, does not in any manner affect or extinguish the admitted debt and default of the Corporate Debtor. The contention of "rectification of default" is wholly baseless, unsupported by any documentary evidence, and contrary to settled principles under the IBC. On the contrary, the record clearly evidences acknowledgment of liability by the Corporate Debtor from time to time, thereby unequivocally establishing the subsistence of debt and occurrence of default. The present Application has been filed with the sole intent to delay and obstruct the adjudication of the captioned Company Petition which is a proceeding in Rem.

10.3. The Contention that the alleged default stood rectified in the year 2019 is denied in toto. Even assuming, without admitting and strictly for the sake of argument, that such a rectification had occurred, it is evident from the subsequent reply dated September 23, 2021 [Exhibit 47 of the Petition] issued by the Corporate Debtor to the Default Notice dated September 14, 2021 [Exhibit 46 of the Petition] issued by Housing Development Finance Corporation Limited ("Original Lender") that a subsisting debt and continuing default persisted on the part of the Corporate Debtor. A bare perusal of the captioned Company Petition, read with the aforesaid documents, unequivocally establishes the existence of debt and occurrence of default. The reliance placed on Section 424(2) of the Companies Act is wholly misconceived and legally untenable, inasmuch as it is settled law that in proceedings under Section 7 of the IBC, the scope of inquiry before this Hon'ble Tribunal is strictly confined to determining the existence of a "financial debt" and the occurrence of default, and upon satisfaction thereof, this Hon'ble Tribunal is mandatorily required to admit the application under Section 7(5) of the IBC. It is further a settled principle of law that an incorrect mention of the date of default in a Section 7 of the IBC Petition is not fatal to its maintainability, so long as the Petition is otherwise within the period of limitation and the existence of debt and default is established on the basis of documentary evidence. Therefore, the Corporate Debtor cannot, under the guise of invoking Section 424(2) of the Companies Act, seek to expand the limited jurisdiction of this Hon'ble Tribunal or re-agitate issues which are wholly extraneous and irrelevant to the determination of debt and default. Accordingly, the reliefs sought by the Corporate Debtor in the present Application are wholly untenable and deserve to be rejected.

10.4. It is an admitted position that the Personal Guarantor Demand Notice was issued to the Personal Guarantor, Mr. Ashutosh Abhyankar. The issuance of the said notice is borne out from the record and is undisputed. It is equally undisputed that the Personal Guarantor Demand Notice was subsequently withdrawn by the Financial Creditor upon discovering an inadvertent factual error contained therein. Upon such discovery, the Financial Creditor promptly withdrew the Personal Guarantor Demand Notice to avoid any confusion or prejudice.

10.5. The Financial Creditor, by its letter dated January 23, 2026, informed the Personal Guarantor of the error and clarified that the default had not been regularized. By the said communication, the Personal Guarantor Demand Notice stood withdrawn. Thereafter, a fresh and rectified Form B Demand Notice dated February 11, 2026 under Personal Guarantor Rules was issued. These documents form part of the Additional Affidavit dated February 16, 2026 filed in the captioned Company Petition. It is submitted that there exists no statutory bar against withdrawal of a demand notice. A creditor is entitled to withdraw a defective notice and issue a fresh notice in accordance with law. Such withdrawal does not affect the underlying debt or the rights of the creditor. Accordingly. the

Personal Guarantor Demand Notice, having been withdrawn, has no legal effect and cannot be relied upon.

10.6. Further it also stated that the Fourth Loan was extended pursuant to specific requests, assurances, and undertakings furnished by the Corporate Debtor for revival and completion of the project, and upon execution of requisite financing and security documents. The said facility was a conscious commercial decision, duly secured, and forms part of the overall financial arrangement between the parties. The Corporate Debtor has failed to place on record any evidence whatsoever to demonstrate that such disbursement was impermissible or in violation of any applicable law, regulation, or contractual stipulation. The said contention is therefore wholly misconceived and liable to be rejected. Therefore, the attempt of the Corporate Debtor to portray the grant of the Fourth Loan as illegal or improper is wholly untenable.

10.7. Corporate Debtor has at no point in time disputed the grant, disbursement, or validity of the Fourth Loan. The Corporate Debtor has availed and enjoyed the benefits arising therefrom. Having done so, the Corporate Debtor is now estopped from challenging the same. Accordingly, the contention that the grant of the Fourth Loan, post classification of the account as NPA, is impermissible, is baseless, contrary to law, and liable to be rejected.

10.8. It is submitted that Clause 8.11 pertains to representations and warranties furnished by the Corporate Debtor itself at the time of execution of the Master Facility Agreement. The said clause does not constitute any representation by the Financial Creditor, nor can the Corporate Debtor rely upon its own self-serving declarations to contend that no default existed, particularly when the contemporaneous record clearly evidences subsisting debt, continuing default, and repeated acknowledgments of liability.

10.9. The reliance placed by the Corporate Debtor on the "Event of Default" clause, which provides that non-payment of indebtedness under any borrowing when due constitutes an event of default, is equally misplaced. The said clause, when properly construed, in fact reinforces the case of the Financial Creditor, inasmuch as any failure on the part of the Corporate Debtor to service its existing indebtedness would itself trigger an event of default. The Corporate Debtor cannot selectively rely on isolated portions of the clause to suggest absence of default, while ignoring the admitted position of non-payment and continuing liability.

10.10. In any event, the existence or otherwise of an "Event of Default" under a contractual framework does not determine the existence of "default" for the purposes of proceedings under Section 7 of the IBC. It is well settled that the scope of inquiry under Section 7 is confined to the existence of a financial debt and occurrence of default based on the material on record, and cannot be defeated by selective or self-serving interpretation of contractual clauses. If the Corporate Debtor has made representations under the Master Facility Agreement which are contrary to the actual state of affairs, the same would amount to misrepresentation and/or suppression of material facts. The Corporate Debtor thus, cannot be permitted to take advantage of its own wrong

10.11. The contention that the "veracity" of the date of default cannot be ascertained on account of non-disclosure of specific disbursement dates is wholly misconceived and hyper-technical. The disbursement of the loan facilities stands duly evidenced from the sanction letters, financing documents, and Statements of Accounts annexed to the Petition and the Rejoinder. The Corporate Debtor has never disputed the sanction or disbursement of the said facilities. In such circumstances, the omission to tabulate individual disbursement dates in the Petition is inconsequential and does not affect the maintainability of a petition under Section 7 of the IBC. The further contention that the date of default must necessarily precede the date of classification of the account as NPA is legally irrelevant in the present proceedings. The occurrence of default stands conclusively established by the Record of Default maintained with the Information Utility (NeSL), which has been duly authenticated and has never been disputed by the Corporate Debtor. In terms of Section 7 read with Section 215 of the IBC, such Record of Default constitutes conclusive evidence of the occurrence of default. Further, it is a settled principle of law that an incorrect mention of the date of default in a Section 7 of the IBC Petition is not fatal to its maintainability, so long as the Petition is otherwise within the period of limitation and the existence of debt and default is established on the basis of documentary evidence.

10.12. It is submitted that the date of default has been consistently reflected as March 31, 2019, being the date of classification of the account as NPA. In accordance with the applicable RBI prudential norms, once a borrower's account is classified as NPA, all facilities granted to such borrower are required to be treated as NPA. Accordingly, the uniform date of default for all facilities has been correctly recorded. In any event, for the purposes of a petition under Section 7 of the IBC, the date of default is relevant primarily for computation of limitation. In the present case, the Corporate Debtor has repeatedly acknowledged its liability in its audited financial statements and correspondence, thereby extending the limitation period in terms of Section 18 of the Limitation Act, 1963. The debt is thus live and enforceable.

10.13. The attempt of the Corporate Debtor to draw artificial distinctions between the date of disbursement, date of default, and date of NPA classification is wholly misconceived and is a deliberate effort to create confusion where none exists. The existence of financial debt and occurrence of default stand clearly established on the basis of documentary evidence and remain undisputed. Therefore, the objections raised in paragraphs 10 to 12 of the Application are baseless, repetitive, and already dealt with in the Rejoinder filed by the Financial Creditor, and are liable to be rejected in limine.

11. ANALYSIS AND FINDINGS

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

11.2. On perusal of the documents it is observed that HDFC Limited(herein after referred to as Original Lender) sanctioned 3 Construction finance Loan Facilities from October 2013 till August 2017 to the Corporate Debtor for construction of residential Project namely “Matoshree Nisarg” at

Mulund East, Mumbai aggregating to an amount of Rs.95 Crore. The loan amounts along with account numbers and disbursement amounts are given herein in the table below;-

Loan Account No.	Facility Agreement Dates	Sanction Amount	Amount Disbursed
6210189446	18.12.2013	35,00,00,0000/-	34,30,00,000
6210233943	22.07.2016	30,00,00,000/-	30,00,00,000
6210246792	14.08.2017	30,00,00,000/-	30,00,00,000

11.3. These financial facilities were secured by various security documents including Demand Promissory notes, Indenture of Mortgage deed and guarantees executed by Mr. Ashutosh Gunwant Abhyankar, Mr. Rajan Ganesh Shirodkar and Mr. Vijay Chintan Yeolekar

11.4. The loan account No. 6210189446,6210246792 and 6210233943 were declared NPA on 31.03.2019 and as a result the original lender issued default notice dated 24.07.2019 demanding an amount of Rs. 4.14 crore within 7 days from the date of the Notice.

11.5. Thereafter replying to the default notice the Corporate Debtor explained the reason for the delay and requested the original lender not to take coercive steps as they will pay the interest regularly.

11.6. Again, vide letter dated 17.12.2020 HDFC bank Ltd sanctioned another financial facility to the Corporate Debtor for an amount of Rs.16.51 Crore repayable within 60 months from the date of 1st drawdown at a rate of interest of 10.50% per annum bearing loan account no.6210288390. This document came to be executed vide Master Facility Agreement dated 22.01.2021. The same was again secured by various security documents including Demand Promissory notes, Indenture of Mortgage deed, undertaking and Indemnity to create Security and guarantees executed by Mr. Ashutosh Gunwant Abhyankar, Mr. Rajan Ganesh Shirodkar and Mr. Vijay Chintan Yeolekar.

11.7. On perusal of the statement of accounts of the 4th Financial Facility, it is observed that the amount of Rs.14.23 Crore was disbursed in tranches till 31.03.2023.

11.8. Due to the default in financial facilities the original lender issued Default Notice dated 14.09.2021 and declared the account bearing no. 6210288390 as NPA w.e.f. from 31.03.2019. Thereafter a recall notice dated 07.11.2022 was also issued and further a demand notice under Section 13(2) of the SARFAESI Act dated 05.12.2022 was issued demanding an amount of Rs.145.99 Crore within a period of 60 days.

11.9. However, the Corporate debtor failed to pay the outstanding amount within the stipulated time in the demand notice

11.10. Vide an assignment agreement dated 31.03.2023 between HDFC Bank (Original Lender)and Omkara Assets Reconstruction Private Limited acting in its capacity as trustee of Omkara PS 11/2022-23 all rights, title, and interest in respect of the loan facilities were transferred to the Petitioner herein i.e. Omkara Assets Reconstruction Private Limited.

11.11. The date of default as mentioned in NeSL form D and in the Part IV of this Application is 31.03.2019 and the Status of Authentication of Default is **"DEEMED TO BE AUTHENTICATED**."

11.12. Notably, the Corporate Debtor has never disputed the loan disbursement, the execution of security documents, or the non-repayment of the debt in either its Reply or its IA. Its objections are purely technical in nature and lack substance.

11.13. Further, the Statement of Accounts annexed to the Rejoinder substantiates the factum of debt and its disbursement. The record is fortified by the execution of loan documents, personal guarantees executed by Mr. Ashutosh Gunwant Abhyankar, Mr. Rajan Ganesh Shirodkar, and Mr. Vijay Chintan Yeolekar, and a Deed of Mortgage creating a security interest in favour of the original lender. The underlying debt is further corroborated by a letter dated 23.09.2021 issued by the Corporate Debtor to the original lender executing a term sheet with the Kanakia Group, which explicitly records an outstanding liability of ₹82.56 Crore along with accrued interest of ₹6.42 Crore. The outstanding position is duly acknowledged in the Corporate Debtor's own balance sheets up to the Financial Year 2022–23. Given that the Corporate Debtor has failed to deny the disbursement in its Reply, the existence of the financial debt stands uncontroverted.

11.14. As per the statutory scheme of the Insolvency and Bankruptcy Code, 2016 (the "Code"), this Adjudicating Authority, at the stage of admission, is required to ascertain whether a financial debt is due and payable, and whether a default has occurred. In our considered view, the Financial Creditor has placed on record cogent and sufficient evidence to substantiate that a financial debt is due and payable, and that the Corporate Debtor has defaulted on the same.

11.15. The Corporate Debtor has in the IA and Reply contended the same arguments and for the sake of brevity the same are not dealt with separately.

11.16. One of the Contention of the Corporate Debtor is qua limitation. In this regard, it is observed that the account of the Corporate Debtor was 1st classified as NPA on 31.03.2019.Thereafter again on assurance given by the Corporate Debtor an amount of Rs.16.51 Crore was sanctioned. The same was also defaulted on 14.09.2021.

11.17. However, It is pertinent to note as per RBI's Master Circular on Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated 01.07.2014 which states that asset classification needs to be done borrower wise and not facility wise i.e. if one account of a borrower becomes NPA, all other accounts are to be classified as NPA from the same day. We are cognisant of the fact that the fourth loan was disbursed much after the NPA date of 31.03.2019, however pursuant to the RBI's Master Circular on Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, even the fourth loan has been treated as NPA w.e.f. 31.03.2019. Further as the date of NPA with regard to the three loan accounts is 31.03.2019 and the date of default for the fourth loan account is 14.09.2021, the cause of action starts from 31.03.2019 for calculation of limitation period. It is pertinent to note that the Corporate Debtor has in its Financial Statements for FY 2013-14 till FY 2022-23 continuously, in the same manner, acknowledged the liability in respect of the of the loan granted by the original lender and all these acknowledgements are within three years of limitation. Further the relevant extracts of the audited balance Sheet of the Corporate Debtor for the financial year ending 31.03.2023 which was signed by the Board of Corporate Debtor on 05.09.2023 acknowledging the debt payable to the original lender i.e. HDFC Limited is reproduced hereunder.

MATOSHREE INFRASTRUCTURE PRIVATE LIMITED
(CIN : U45203MH2007PTC173437)
NOTES TO FINANCIAL STATEMENTS

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NOTE 4 : LONG TERM BORROWINGS	31.3.2023 (Rs.)	31.3.2023 (Rs.)	31.3.2022 (Rs.)	31.3.2022 (Rs.)
Unsecured Loans from related parties:				
Loans from Directors (Refer to Note No. 4.1 & 4.2)		9,13,56,980		9,32,81,578
		9,13,56,980		9,32,81,578
Secured Loans from Financial Institution:				
HDFC Ltd - (for Security & Repayment profile refer to Note 4.3.1 & 4.4.1)		32,31,70,319		32,31,70,319
HDFC Ltd - (for Security & Repayment profile refer to Note 4.3.1 & 4.4.2)		14,23,00,000		14,23,00,000
		46,54,70,319		46,54,70,319
Total		55,68,27,299		55,87,51,897

11.18. The following charts shows that this application has been filed by the Applicant within the limitation period and therefore the objection of the CD In this regard has no merits.

Particulars	**Date**	**Effect of limitation**
Date of default	31.03.2019	The Account of Corporate Debtor was classified as NPA.
Original limitation under Article 137 of the Limitation Act.	31.03.2019 to 30.03.2022	Initial Period of three years available to FC for filing Application under Section 7.
Financial Statements of Corporate Debtor for FY 2019-20 signed on behalf of its Board of Director on 16.12.2020	16.12.2020	Acknowledgement in the Financial Statements constitute acknowledgement of liability which extended the limitation by three years.

Fresh Limitation after acknowledgement in the Balance sheet	16.12.2020 to 15.12.2023	Fresh three-year limitation commenced.
Financial Statements of Corporate Debtor for FY 2020-2021 signed on behalf of its Board of Director on 30.11.2021	30.11.2021	Acknowledgement in the Financial Statements constitute acknowledgement of liability which extended the limitation by three years.
Fresh Limitation after acknowledgement in the Balance sheet	30.11.2021 to 30.11.2024	Fresh three-year limitation commenced.
Financial Statements of Corporate Debtor for FY 2021-2022 signed on behalf of its Board of Director on 30.09.2022	30.09.2022	Acknowledgement in the Financial Statements constitute acknowledgement of liability which extended the limitation by three years.
Fresh Limitation after acknowledgement in the Balance sheet	30.09.2022 to 30.09.2025	Fresh three-year limitation commenced.
Financial Statements of Corporate Debtor for FY 2022-2023 signed on behalf of its Board of Director on 05.09.2023	05.09.2023	Acknowledgement in the Financial Statements constitute acknowledgement of liability which extended the limitation by three years.
Fresh Limitation after acknowledgement in the Financial Statement	05.09.2023 to 05.09.2026	Fresh three-year limitation commenced.
Date of filing present Company Petition	01.03.2025	Petition filed well within the subsisting limitation period.

11.19. In regard to the above this tribunal has relied upon the judgement of Hon’ble NCLAT in **Dinesh G Jaiswal vs. Punjab National Bank, Asset Recovery Branch and Anr**. wherein it has been held that financial account statements of an entity constitute valid acknowledgment of debt and extend the limitation period. The relevant abstract of the judgement is produced below:-

"26. In view of the law laid down by the Hon'ble Supreme Court in ITC Limited (supra), we hold that the offer of one Time Settlement (OTS) made by the Corporate Debtor to the Financial Creditor constitutes an acknowledgement of liability within the meaning of section 18 of the Limitation Act, 1963. The Judgment of the Hon'ble Allahabad High Court in Shibcharan Das (supra) must be held to be inapplicable in view of the judgment of the Hon'ble Supreme Court in ITC Limited. Further the order of the Hon'ble NCLAT discussed in previous paras directly relates to this matter and can be a continuous cause of action as well. 1 (2021) 10 SCC 330 2 2022 SCC OnLine NCLAT 4237 4

27. In the light of the above discussion and the fact that the Corporate Debtor <u>in its financial statements for the F.Y. 2014-2015 and F.Y. 2015-2016 filed with the Ministry of Corporate Affairs acknowledges the liability towards the Financial Creditor; and also, in its letter dated 23.02.2017 submitted a proposal for one-time settlement of dues of the Financial Creditor, IDBI Bank Limited and Bank of India, which was also revised on 15.09.2018.</u>

28. Therefore, we hold that the petition filed by the Financial Creditor is within limitation

(emphasis supplied)

11.20. In regard to the limitation this Tribunal has further relied on Hon'ble Supreme Court's judgment in matter of **Dena Bank v. C. Shivkumar Reddy, (2021) 10 SCC 330**, wherein it was held that

"139 Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim,made within the period of limitation, should not also be construed as an

acknowledgment to attract Section 18 of the Limitation Act….Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years."

(emphasis supplied)

11.21. As has been stated in the chart produced in para 11.20 above, Applicant has placed the audited financial Statements of the CD for FY 2020-2021 to 2022-2023 (3 years) wherein the CD has acknowledged the debt and its liability. As a result of the same the limitation period stand extended till 05.09.2026 and that the Application has been filed by the Applicant on 01.03.2025.

11.22. Considering the facts of this matter and applying the decision of the Hon'ble Supreme Court in Dena Bank(Supra) and Hon'ble NCLAT in Dinesh G Jaiswal (Supra) , we are of the view that the present Application filed on 01.03.2025 is well within limitation period.

11.23. The CD has contended that the date of NPA i.e.31.03.2019 has been taken as the date of default, however the date of default is different than the date of NPA and normally it precedes the date of NPA by 90 days. In regard to the same , we are of the view that date of default in Section 7 or 9 petition is relevant only for the purpose of computation of limitation period and that Applicant has demonstrated that the Application is filed within the limitation period and therefore in view of the same, the said objection raised by the Corporate Debtor is of no significance. Considering that even if the date of default is considered 90 days prior to the date of

NPA i.e.31.03.2019, still the Application remains well within the limitation period.

11.24. It is the contention of the Corporate Debtor that the Petition suffers from defects, namely an incomplete Form-1 (absence of dates of disbursement and omission of the Statement of Accounts) and not attachment of certificate under the Bankers' Books Evidence Act. On consideration of the documents on record , this Tribunal finds that these are procedural deficiencies which, in the facts of the present case, are curable and do not defeat the substantive claim of the Applicant. The Applicant, by way of its Rejoinder has furnished the Statement of Accounts maintained by the original lender i.e. HDFC Limited demonstrating the dates and amounts of disbursements. Those documents placed on record sufficiently establish the existence of the debt and the default. Moreover, non-attachment of the Bankers Book Evidence Certificate does not invalidate the Application when the Applicant has established the debt and default with the help of different documents executed by the Corporate Debtor. Further the audited balance sheets of the Corporate Debtor evidence that the debt is payable to the original lender, which is now assigned in favour of the Applicant ARC.

11.25. Another Contention of Corporate Debtor that there was no default at the time of sanctioning of the 4th facility as stated allegedly in the Master Facility agreement dated 22.01.2021, is misplaced. Only because the fact that earlier loans were under default is not stated in the Master Facility Agreement dated 22.01.2021, the stand of the Corporate Debtor that there was no default cannot be accepted. The Corporate Debtor has not placed any documentary evidence to demonstrate that after the three loan accounts became NPA on 31.03.2019, it had cleared the default and made the account standard. Rather, the Corporate Debtor states that as there is no mention of the fact of default in Master Facility Agreement, the same establishes that there was no default at the time of execution of the said agreement. Considering the other documents including demand notice dated 24.07.2019 issued by the Original Lender and its reply of the Corporate Debtor dated 27.07.2019, default notice dated 14.09.2021, CD's response dated 23.09.2021, recall notice dated 07.11.2022, demand notice dated 05.12.2022 and copy of record of default by NeSL (as per which date of default is 31.03.2019), wherein very clearly the fact as to commitment of default by the Corporate Debtor has been recorded, we do not have any doubt about the incurrence of default by the Corporate Debtor for the amount claimed and that the said default continues till date. As such, we are not convinced by the contention of the Corporate Debtor in this regard and therefore, reject the same.

11.26. The Additional Affidavit filed by the Corporate Debtor is immaterial to the present proceeding. It relates exclusively to a demand notice served on the Personal Guarantor, whereas the instant proceedings concern the insolvency of the Corporate Debtor - a distinct and separate process. Consequently, no reliance can be placed on that demand notice as substantiating the corporate insolvency petition. Moreover, the fact that the Applicant withdrew the alleged demand notice and issued a fresh notice demonstrates that the initial notice was issued in error; reliance upon the earlier letter is therefore misplaced and cannot support the case of the Respondent before this Tribunal.

11.27. It is the case of the Corporate Debtor that the Company petition is filed without any authority, however with regard to the same it is observed that the Assignment Agreement dated 31.03.2023 annexed to the Petition as Exhibit-1 that the Petitioner Omkara Asset Reconstruction Private Limited (also acting in its capacity as Trustee of the Omkara PS 11/2022-23 Trust) is fully entitled to initiate and prosecute these proceedings. Moreover, the Board Resolution dated 27.06.2024 annexed to the Petition as Exhibit-2 clearly authorizes Mr. Piyush Jain to sign seal, execute and deliver all necessary applications, petitions, affidavits and other documents before any Court, Tribunal or Authority in connection with the business and affairs of the Company/Trust. Clause (d) of the said Board Resolution states that Mr. Piyush Jain has been specifically authorized to appear before Tribunal to affirm pleadings on oath and to perform all acts, deeds, and things necessary for safeguarding the interests of the Company/Trust. Accordingly, the said Resolution constitutes a valid and sufficient authorization to institute the present Petition under Section 7 of IBC. Hence this contention of the Corporate Debtor is without any merits and warrants to be rejected.

11.28. Further the Corporate Debtor in its IA No. 779 of 2026 has sought to summon, enforce the attendance and to Direct the cross-examination of the authorised officer or the person who has granted the 4th Financial Facility to the Corporate Debtor. In this connection, it is the considered opinion of this bench that the proceeding under the IBC, 2016 are summary in nature and such a request cannot be entertained at this stage more particularly when the Applicant has placed sufficient and cogent material which evidences that loans were sanctioned and disbursed to the Corporate Debtor , Security was provided by the Corporate Debtor, loan acknowledgement exists in the annual accounts of the Corporate Debtor and the existence of debt is otherwise not denied by the Corporate Debtor. Moreover , if the Corporate Debtor had any grievance in regard to the conduct of the Applicant in regard to sanction and disbursal of the 4th loan in-spite of the fact that its account was under default and had become NPA, it could have approached the regulator for the ARC's/Banks i.e. RBI, rather than raising the said issue before this Tribunal, which is otherwise satisfied about the existence of debt and default. For the said reasons, this IA i.e., **IA/779/(MB)/2026**, is hereby **dismissed** as non-maintainable.

11.29. The reliance placed by the Corporate Debtor on the judgment of the Hon'ble NCLAT in **Royal Construction v. Gannon Dunkerley & Company Limited** in Company Appeal (AT) (Insolvency) No. 393 of 2025 is entirely misplaced and fails to support its case. The said appeal before the Hon'ble NCLAT arose out of an application under Section 9 of the Code and was dismissed owing to a pre-existing dispute and the statutory bar under Section 10A. Further in that *case* it was held if the date of default required any change or modification, the onus was on the Appellant to have sought leave of the Adjudicating Authority to file an amendment application. However, in the instant case the Applicant has not sought any change in the Date of Default. Further it is also observed that there is no inconsistency in the date of default as mentioned in Part IV and in the record of default issued by NeSL, as both the dates are same i.e. 31.03.2019.It is also pertinent to note that the date of default is primarily relevant for determining whether the Application is filed within limitation or not. In our considered view, the present petition is well within limitation. Hence this judgement does not have any relevancy with regard to the present application.

11.30. It is also relevant here to refer to the Judgement of 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.* wherein while examining the validity of the admission of the Corporate Debtor to CIRP, Hon'ble Supreme Court 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. 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. <u>But when the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor which has been succinctly summed up in Innoventive (supra):</u>*

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

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

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 Applicant has established the existence of debt and default exceeding the threshold amount of Rs. One Crore as per Section 4 of IBC 2016. Moreover, the Applicant has placed the necessary Record of Default issued by the information utility i.e. NeSL , which clearly states 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 as all the required information and documents have been placed on record by the Applicant.Further, 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. 824/MB/2025 filed under Section 7 of IBC, 2016, by Omkara Assets Reconstruction Pvt. Ltd., the Applicant (FC) for initiating CIRP in respect of Matoshree Infrastructure Pvt. Ltd 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 **SSARVI Resolution Services LLP** through its Authorised Signatory Mr. Prashant Jain, having Registration No. IBBI/IPE-

0144/IPA-1/2022-23/50008, and **e-mail address** prashant.jain@ssarviconsultancy.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. IRP to publish Form – A at the Registered office and project location.

IX. 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.

X. 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.

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

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

XIII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.

XIV. 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.

XV. **Compliance report of the order by Designated Registrar is to be submitted** today.

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