S.No.02

**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**HYDERABAD BENCH – II**
**VC AND PHYSICAL (HYBRID) MODE**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
**23.07.2026 AT 10:30 A.M.**

**Company Petition IB/12/7/HDB/2025**
**U/s 7 of IBC**

**IN THE MATTER OF:**
**State Bank of India** **…Petitioner/s**

**Vs**

**Neol Pharma (India) Pvt Ltd** **…Respondent/s**

**CORAM:-**
**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)**
**SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Orders pronounced, recorded vide separate sheets. In the result, the Company Petition IB/12/7/HDB/2025 is admitted.

**Sd/-**
**MEMBER(T)**

**Sd/-**
**MEMBER(J)**

Vamsi

# IN THE NATIONAL COMPANY LAW TRIBUNAL
# HYDERABAD BENCH - II

## CP(IB) 12/7/HDB/2025

*[U/s.7 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

**Between:**

State Bank of India
Stressed Assets Management Branch
1st Floor, SCO 99-107, Sector 8-C
Chandigarh – 160 018

…Financial Creditor

**And**

M/s.Noel Pharma (India) Limited
***(As per Certificate of Incorporation dated 01.12.2017)***
Regd. Office: 24-85/7
Lakminarayana Nagar Colony
New IDA, Uppal
Hyderabad – 500 039

…Corporate Debtor

**Date of Order: 23.07.2026**

**Coram:**

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Shri Sanjay Puri, Hon'ble Member (Technical)

**Counsel Present:**

| | | |
|---|---|---|
| For the Financial Creditor | : | Mr. Deepak Bhattacharjee, Sr. Counsel alongwith Ms. Niharika Agarwal, Advocate |
| For the Corporate Debtor | : | Mr. Y. Suryanarayana & Mr. Ch.Srinivasulu, Advocates |

1. The present Petition has been filed by the State Bank of India **(Financial Creditor/FC)** under Section 7 of the Insolvency and Bankruptcy Code, 2016 **(IBC)** seeking initiation of the Corporate Insolvency Resolution Process **(CIRP)** against M/s. Noel Pharma (India) Private Limited **(Corporate Debtor/CD),** on the ground of default in repayment of financial debt of Rs.79,10,35,587.57[1] as on 31.10.2024, and the Date of Default is 30.06.2018.

2. **PETITION**

   a) The Corporate Debtor originally commenced its business as a proprietorship concern under the name and style of *M/s. Noel Pharma*, owned by Mr. S. Venkataiah. Subsequently, the proprietorship was converted into a partnership firm and thereafter into a Private Limited Company on 15.11.2012**.** It is further stated that the Company was later converted into a Public Limited Company under Section 18 of the Companies Act, 2013, pursuant to the approval granted by the Central Government and accepted by the Registrar of Companies, Hyderabad, vide SRN No. G67309724 dated 01.12.2017.

   b) The Corporate Debtor is engaged in the business of manufacturing, importing, exporting, purchasing, selling, supplying and distributing pharmaceutical products, medicines, drugs, formulations, capsules and Ayurvedic medicinal products in India and abroad[2].

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[1] Details of Date of Default alongwith Days of Default are filed as Annexure-5 @ pg. 96-99 of the petition

[2] Copies of Certificate of Incorporation alongwith Memorandum of Association and Articles of Association of the CD - Annexure -2 @ pgs. 40-67 of the petition

c) At the request of the then proprietorship concern, the Financial Creditor initially sanctioned fund-based and non-fund-based credit facilities aggregating to Rs.8.00 crores vide Sanction Letter dated 26.05.2007. Thereafter, the credit facilities were enhanced from time to time and ultimately increased to Rs.35.48 crores vide Sanction Letter dated 20.01.2012 and Letter of Arrangement dated 12.03.2012, pursuant to which the borrower executed the requisite loan and security documents.

d) Upon its incorporation as a Private Limited Company on 15.11.2012**,** the Corporate Debtor sought further enhancement of the credit facilities. Accordingly, the Financial Creditor enhanced the overall fund-based credit facilities from Rs.30.69 crores to Rs.42.89 crores vide Sanction Letter dated 05.12.2012 and Letter of Arrangement dated 30.11.2012. In pursuance thereof, the Corporate Debtor executed, inter alia, a Supplemental Agreement for Loan-cum-Hypothecation, Link Letter, Omnibus Counter Guarantee and Guarantee Agreement, all dated 06.12.2012**.** The personal guarantees of Mr. S. Venkataiah (Managing Director), Mr. G. Mastan (Director), Mrs. S. Sujatha and Mr. K. Narsing Naik were also obtained. The Summary of the Credit Facilities is as follows:

| **Sl.No.** | **Type of Credit Facilities** | **Amount (Rs. in crs.)** |
|---|---|---|
| 1. | CC(Hyp) and CC (BD) | 35.00 |
| **Total FBWC Limit** | | **35.00** |
| 2. | Term Loan-1 | 1.26 |
| 3. | Term Loan-2 | 3.03 |
| 4. | Term Loan-3 | 1.74 |
| 5. | Term Loan-4 | 0.67 |
| 6. | Term Loan-5 | 1.19 |

| | | |
|---|---|---|
| **Total Term Loans** | | **7.89** |
| **Total Fund based Loans** | | **42.89** |
| 7. | ILC/FLC | (7.00)# |
| | BG | (0.10)# |
| **Total Non-Fund based Limit** | | **(7.00)#** |
| **Total Fund based and Non-Fund based** | | **42.89** |

#Rs.7.00 crore within overall Cash Credit Limit

e) The Corporate Debtor and the Personal Guarantors created equitable mortgages over various immovable properties by deposit of title deeds in favour of the Financial Creditor as security for the repayment of the Credit Facilities.

f) According to the Financial Creditor, the Corporate Debtor, through its Link Letter dated 05.12.2012[3], confirmed that the renewal-cum-enhancement of the credit facilities was in continuation of the facilities earlier sanctioned in the name of M/s. Noel Pharma and requested continuation of the loan accounts under the existing Customer Identification Number. A Board Resolution dated 05.12.2012[4] was also passed authorising the said transaction.

g) Thereafter, at the request of the Corporate Debtor, the Financial Creditor renewed the Credit Facilities aggregating to Rs.37.85 crores vide Sanction Letter No. MERM/2015-16/16 dated 01.05.2015. The Corporate Debtor is stated to have passed a Board Resolution dated 08.05.2015[5]accepting the terms and conditions of the renewal.

[3] Link letter as Annexure-11 @ pgs.149-151 of the petition
[4] Board Resolution - Annexure-13 @ pgs. 156 & 157 of the petition
[5] Annexure-15 @ pgs. 168 to 169 of the petition

h) It is averred that, owing to persistent irregularities in the operation of the loan accounts, the accounts of the Corporate Debtor were classified as Non-Performing Assets (NPA) on 27.09.2018.

i) The Financial Creditor thereafter issued a Demand Notice dated 08.02.2019 under Section 13(2) of the SARFAESI Act, 2002, calling upon the Corporate Debtor and the Guarantors to discharge the outstanding liability of Rs.38,64,04,864.52 as on 31.01.2019, together with future interest and other charges. It is stated that the Corporate Debtor, by its Reply dated 22.04.2019, while not disputing the availing of the credit facilities, requested that the Demand Notice be kept in abeyance on the ground that it was attempting an amicable settlement. Similar replies were also submitted by certain Personal Guarantors. The Financial Creditor rejected the said request and reiterated that the account had already been classified as NPA and that proceedings under the SARFAESI Act had been validly initiated.

j) Thereafter, the Financial Creditor issued a Possession Notice dated 06.05.2019 under Section 13(4) of the SARFAESI Act, 2002. Subsequently, on the request of the Corporate Debtor, the Financial Creditor sanctioned a One Time Settlement (**OTS**) for Rs.16.16 crores vide letter dated 07.03.2020, which was later extended vide communication dated 03.09.2021 up to 31.03.2022. It is further stated that, pursuant to the OTS, three mortgaged properties belonging to the Personal Guarantors were released. However, according to the Financial Creditor, the Corporate Debtor failed to adhere to the payment schedule stipulated under the OTS, resulting in the failure of the settlement. Though subsequent requests for extension were made, the same were not accepted as the settlement amount was considered inadequate vis-à-vis the outstanding dues.

k) It is further averred that the Corporate Debtor created and registered the requisite charges in favour of the Financial Creditor with the Registrar of Companies (**ROC**) for securing the credit facilities. It is also stated that the Corporate Debtor periodically acknowledged and affirmed the outstanding liability.

l) Since the Corporate Debtor failed to discharge its liabilities, the Financial Creditor instituted Original Application No.757 of 2019 before the Debts Recovery Tribunal-II, Chandigarh, seeking recovery of Rs.39,91,26,274.15 together with future interest and costs against the Corporate Debtor and the Guarantors. The said proceedings are stated to be pending adjudication.

m) According to the Financial Creditor, despite repeated opportunities, multiple restructuring efforts, sanction of One Time Settlement proposals and extension thereof, the Corporate Debtor failed to liquidate the outstanding dues. Consequently, the present application under Section 7 of the Code has been filed seeking commencement of the Corporate Insolvency Resolution Process against the Corporate Debtor.

## 3. COUNTER

a) The Corporate Debtor has filed its counter contending that the present Petition is liable to be dismissed in limine as being premature and inequitable. It is averred that the Petition has been filed despite the parties being engaged in bona fide negotiations for an amicable settlement through a One Time Settlement mechanism.

b) It is alleged that default amount of Rs.79,10,35,587.57 as on 31.10.2024 is factually incorrect. According to the Corporate Debtor, it had paid a sum of Rs.3.20 crores pursuant to the OTS sanctioned by the Financial Creditor vide Letter dated 07.03.2020, which payment was acknowledged by the Financial Creditor vide communication dated 03.09.2021. It is contended that the said amount has not been given due credit while computing the amount claimed to be in default.

c) The Corporate Debtor further submits that it has never disputed its loan liability and that, since the year 2016, it has been continuously engaging with the Financial Creditor for settlement of the outstanding dues through the OTS route and has also made substantial payments towards the same.

d) The Corporate Debtor has admitted the financial facilities availed from the Financial Creditor and states that its Balance Sheet for the Financial Year 2015-16, duly approved by its Board of Directors, reflects the secured loans obtained from various banks, including the Financial Creditor.

e) It is further averred that, as per the Balance Sheet as on 31.03.2016, an amount of Rs.35,67,15,680/- was reflected under the head "Secured Loans" payable to banks, including the State Bank of India. According to the Corporate Debtor, after taking into account the payments made during the period from 2015-16 to 2023-24, the outstanding amount as on 31.03.2024 stood recalculated at Rs.36,58,63,791/-. In support thereof, copies of the Balance Sheets for the Financial Years 2015-16 and 2023-24 have been placed on record as **Annexure-B** to the counter.

f) The Corporate Debtor does not dispute the initiation of proceedings under the SARFAESI Act, 2002, including the issuance of the Demand Notice under Section 13(2) and the Possession Notice under Section 13(4). However, it is contended that the issuance of such notices and the taking of symbolic possession do not, by themselves, warrant initiation of CIRP under the Code, particularly when the parties were actively pursuing settlement of the dispute.

g) It is further averred that the Corporate Debtor submitted revised OTS proposals on 19.01.2023 and 24.01.2023 seeking extension and modification of the settlement terms. According to the Corporate Debtor, the Financial Creditor, through its email dated 20.01.2023, encouraged submission of an improved proposal along with payment of the pending interest for consideration of the proposal on merits. It is contended that the proposal has not yet been finally decided.

h) The Corporate Debtor has further relied upon its email dated 06.06.2025[6] relating to the OTS proposal to contend that settlement negotiations between the parties are still continuing. It has sought liberty to place on record subsequent developments, payments and other documents in support of its settlement efforts.

i) The Corporate Debtor has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Vidarbha Industries Power Limited v. Axis Bank Limited*, *(2022) 8 SCC 352***, to contend that even where default is established, the Adjudicating Authority possesses discretion while considering admission of an application under Section 7 of the Code and may take into consideration the surrounding facts and equities of the case.

j) It is further contended that initiation of CIRP during the pendency of an actively negotiated OTS is inequitable and contrary to the objective of corporate revival, particularly when the Corporate Debtor has already made substantial payments towards settlement and has demonstrated its intention to resolve the outstanding liability.

k) The Corporate Debtor has also relied upon the judgment of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India*, *(2019) 4 SCC 17***, to contend that the Insolvency and Bankruptcy Code is intended to facilitate revival and resolution of Corporate Debtors and ought not to be employed merely as a debt recovery mechanism. It is submitted that the conduct of the Corporate Debtor demonstrates bona fides and does not reflect any intention to willfully evade its liabilities.

[6] OTS proposal mail dated 06.06.2025 is filed as Annexure-A @ pgs.10 to 25 of the counter

l) On the aforesaid grounds, the Corporate Debtor has prayed that the present Petition be dismissed as premature or, in the alternative, that its consideration be deferred to enable the parties to conclude the ongoing settlement process.

## 4. REJOINDER

a) The Financial Creditor has filed a Rejoinder reiterating and reaffirming the averments made in the Company Petition and denying the allegations contained in the Counter.

b) It is averred that the Corporate Debtor has not disputed either the financial debt or the occurrence of default. According to the Financial Creditor, the Corporate Debtor itself has admitted that it has been making efforts to settle the outstanding dues through the One Time Settlement mechanism, which constitutes an acknowledgment of the debt and default.

c) It is further averred that the Corporate Debtor has committed default in repayment of the financial debt, which stands acknowledged through various loan and security documents, revival letters, replies to the notices issued under the SARFAESI Act, 2002 and correspondence seeking settlement of the outstanding dues. The Financial Creditor contends that no compromise proposal is presently under its consideration and that, in the absence of any concluded and binding settlement, it is entitled to seek initiation of the Corporate Insolvency Resolution Process under Section 7 of the Code. It is further submitted that the Corporate Debtor cannot rely upon inconclusive and prolonged settlement negotiations to postpone the statutory insolvency process.

d) It is averred that a Compromise Proposal was sanctioned vide Letter dated 07.03.2020[7], which was subsequently extended up to 31.03.2022. According to the Financial Creditor, upon the Corporate Debtor seeking further extension of the said Compromise, it was informed vide communication dated 20.01.2023 that both the original and the extended Compromise Offers had failed, stood expired and were no longer valid. It is further submitted that the Financial Creditor categorically declined any further Compromise Proposal vide letter dated 15.04.2023[8].

e) The Financial Creditor further submits that the Compromise Proposal submitted by the Corporate Debtor offering Rs.14.14 crores vide Letter dated 28.01.2025 was rejected by the Financial Creditor vide letter dated 18.02.2025[9] and email dated 28.07.2025[10].

f) The Financial Creditor has contended that the reliance placed by the Corporate Debtor on the judgment of the Hon'ble Supreme Court in ***Vidarbha Industries Power Limited v. Axis Bank Limited*, *(2022) 8 SCC 352***, is misconceived and inapplicable to the facts of the present case. According to the Financial Creditor, the said decision turned on its own peculiar facts and does not confer an unfettered discretion upon the Adjudicating Authority to decline admission of an application under Section 7 once the existence of debt and default stands established.

[7] Annexure-24 @ pg.351 to 352 of the Petition
[8] Annexure-34 @ pg.368 of the petition
[9] Annexure-1 @ pg. 12 of the Rejoinder
[10] Annexure-2 @ pg. 13-14 of the Rejoinder

g) It is further averred that no Compromise Proposal is presently under active consideration. According to the Financial Creditor, the remittance of Rs.3.02 crores, in the absence of any concluded settlement or accepted terms, neither discharges the outstanding liability nor cures the default committed by the Corporate Debtor.

h) The Financial Creditor has also placed reliance upon the judgment of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India***, ***(2019) 4 SCC 17***, to contend that while the Insolvency and Bankruptcy Code is intended to facilitate revival and resolution of Corporate Debtors, a Financial Creditor is equally entitled to invoke the provisions of Section 7 upon establishment of a financial debt and default. It is further submitted that the present proceedings have been initiated in accordance with the statutory framework of the Code and not as a debt recovery mechanism. The Financial Creditor has also contended that proof of willful default or financial misfeasance is not a prerequisite for admission of an application under Section 7 of the Code.

i. It is lastly averred that there is no concluded or enforceable settlement between the parties warranting deferment of the present proceedings. According to the Financial Creditor, the alleged ongoing settlement is unilateral, indefinite and has not culminated in any binding agreement. It is, therefore, submitted that repeated references to settlement negotiations are intended only to delay the Insolvency Resolution Process contemplated under the Code.

## 5. WRITTEN SUBMISSIONS BY FINANCIAL CREDITOR

a) The existence of the financial debt and the occurrence of default stand unequivocally admitted by the Corporate Debtor in its pleadings. The Corporate Debtor has never disputed the availing of the Credit Facilities and has, on the contrary, consistently acknowledged its liability by continuously engaging with the Financial Creditor for settlement of the outstanding dues through various One Time Settlement proposals. It was submitted that the total outstanding financial debt as on 31.10.2024 is Rs.79,10,35,587.57.

b) The present Petition is well within the period of limitation. In this regard, reliance was placed upon the revival letters executed by the Corporate Debtor on 08.06.2015 and 04.06.2018, as well as the part payments made by the Corporate Debtor on 19.10.2020, 30.12.2020, 26.02.2021, 31.03.2021, 30.06.2021 and 01.07.2021. It was argued that these acknowledgements and part payments constitute valid acknowledgements of liability and effectively extend the period of limitation.

c) The continuous correspondence exchanged between the parties also constitutes acknowledgment of the subsisting liability. In support thereof, reliance was placed upon the following events:

- sanction of the OTS by the Financial Creditor on 07.03.2020;
- reply of the Corporate Debtor regarding the OTS on 31.03.2021;
- extension of the OTS by the Financial Creditor vide communication dated 03.09.2021;
- release of properties on 20.09.2021 to enable the Corporate Debtor to honour the OTS commitments;

- communication by the Corporate Debtor dated 25.11.2021 reiterating its commitment to make payment under the OTS;
- intimation by the Financial Creditor regarding cancellation of the OTS on 09.12.2021 and 04.05.2022;
- requests made by the Corporate Debtor seeking extension of the OTS on 24.01.2023 and 28.02.2023;
- rejection of the request for extension by the Financial Creditor vide communication dated 15.04.2023;
- fresh OTS proposal submitted by the Corporate Debtor on 28.01.2025; and
- rejection of the said proposal by the Financial Creditor vide letter dated 18.02.2025.

d) The objection of the Corporate Debtor that the present Petition is premature on account of the pendency of an OTS proposal is wholly misconceived. no OTS proposal is presently pending consideration and that all earlier settlement proposals stood rejected by the Financial Creditor. In the absence of any concluded or binding settlement, there is no legal impediment to the initiation of proceedings under Section 7 of the Code.

e) Reliance placed by the Corporate Debtor on the judgment of the Hon'ble Supreme Court in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352***, is misplaced. The said judgment was rendered in the peculiar facts of that case and does not lay down a proposition that admission of an application under Section 7 can be declined despite the establishment of financial debt and default. According to the Financial Creditor, the ratio of the said judgment is confined to exceptional circumstances where there existed a pending adjudication likely to result in a substantial positive cash inflow to the Corporate Debtor, making admission of the insolvency petition manifestly inequitable. It was submitted that no such exceptional circumstance exists in the present case.

f) The payment of Rs.3.00 crores made by the Corporate Debtor does not cure the default or extinguish the outstanding liability. The said payment constitutes only a part payment and cannot defeat the statutory right of the Financial Creditor to invoke Section 7 of the Code.

g) Reliance placed by the Corporate Debtor on the judgment of the Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17***, is misconceived. While the Insolvency and Bankruptcy Code is intended to facilitate resolution and revival of Corporate Debtors, the present proceedings have not been initiated as a recovery mechanism but strictly in accordance with the statutory framework of the Code upon the occurrence of an admitted financial debt and default. It was, therefore, prayed that the Petition be admitted and the Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.

**6. WRITTEN SUBMISSIONS BY CORPORATE DEBTOR**

a) The Corporate Debtor has filed written submissions contending that the Financial Creditor is interested solely in recovery of its dues and not in the insolvency resolution of the Corporate Debtor. It is submitted that the present proceedings constitute an abuse of the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016. In support of the said contention, it is submitted that the Financial Creditor had already instituted Original Application No. 757 of 2019 before the Debts Recovery Tribunal, Chandigarh, seeking recovery of Rs.39,91,26,274.15 together with future interest at 13.55% per annum and 2% penal interest from 24.04.2019. It is contended that, having already invoked the recovery mechanism before the Debts Recovery Tribunal, the Financial Creditor is now seeking to invoke the provisions of the Code merely as an additional recovery tool.

b) It is further submitted that the parties had entered into a One Time Settlement (**OTS**), which was sanctioned by the Financial Creditor vide letter dated 07.03.2020. Reliance has been placed upon Clause VIII (2) of the OTS terms, whereby the Financial Creditor agreed to release the secured properties upon receipt of the proportionate value of each property. It is further submitted that the Financial Creditor, vide its communication dated 03.09.2021, acknowledged receipt of Rs.3.02 crores towards the OTS and also released certain mortgaged properties in terms thereof. According to the Corporate Debtor, the said OTS constituted a substituted contract attracting the doctrine of novation under Section 62 of the Indian Contract Act, 1872**,** thereby superseding the earlier contractual arrangement. It is contended that, having accepted part performance under the OTS, the Financial Creditor could not disregard the settlement and simultaneously seek initiation of the Corporate Insolvency Resolution Process (CIRP). It is further submitted that the subsequent failure of the settlement, including circumstances beyond the control of the Corporate Debtor, was not fairly considered by the Financial Creditor.

c) The present Company Petition is barred by limitation. The Petition filed on 05.11.2024, discloses the Date of Default as 30.06.2019, and having been instituted beyond three years from the alleged Date of Default, is barred by limitation under Section 238A of the Insolvency and Bankruptcy Code, 2016, read with Article 137 of the Limitation Act, 1963.

d) The Statement of Account dated 31.10.2024, relied upon by the Financial Creditor, consists merely of computer-generated printouts and has neither been certified by an Authorised Officer in accordance with the Bankers' Books Evidence Act, 1891, nor accompanied by the requisite Certificate under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023. It was, therefore, submitted that the said Statement of Account cannot be relied upon for establishing the amount allegedly due and payable.

e) Lastly, the Record of Default obtained from the National E-Governance Services Limited (NeSL), contained in Form-D (Parts A and B), is also unreliable, as it does not disclose any authentication by the Corporate Debtor. According to the Corporate Debtor, the amount reflected therein remains unauthenticated and, therefore, the Petition founded upon such Record of Default is liable to be dismissed.

**7.** We have heard Mr. Deepak Bhattacharjee, Learned Senior Counsel appearing for the Petitioner and Mr. Y. Suryanarayana, Learned Counsel for the Respondent and have gone through the entire records including written submissions of the parties.

## 8. Findings

Based on the pleadings, documents placed on record and the rival submissions advanced by the Learned Senior Counsel for the parties, the following issues arise for consideration:

i. Whether the Financial Creditor has established the existence of a financial debt and the occurrence of default?

ii. Whether the present Petition is within limitation?

iii. What is the effect of the One Time Settlement (**OTS**) and the subsequent negotiations between the parties?

iv. Whether the pendency of proceedings before the Debts Recovery Tribunal and under the SARFAESI Act renders the present Petition not maintainable?

v. Whether the objections regarding the Statement of Account and the Record of Default are sustainable?

vi. Whether the reliance placed by the Corporate Debtor on the judgment in ***Vidarbha Industries Power Limited v. Axis Bank Limited*** is applicable to the facts of the present case?

### i. Existence of Financial Debt and Default

a) The first question which falls for consideration is whether the Financial Creditor has established the existence of a financial debt within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016 and the occurrence of default as defined under Section 3(12) of the Code.

b) From the material placed on record, it is evident that the Financial Creditor had sanctioned various fund-based and non-fund based Credit Facilities to the Corporate Debtor commencing from 26.05.2007, which were renewed, enhanced and restructured from time to time. Pursuant thereto, the Corporate Debtor executed the requisite loan documents, loan-cum-hypothecation agreements, supplemental agreements, guarantee agreements, mortgage documents, link letters and other security documents. The creation of security interest by deposit of title deeds and registration of charges with the Registrar of Companies is also borne out from the record.

c) According to the Financial Creditor, the total outstanding financial debt as on 31.10.2024 is Rs.79,10,35,587.57. The loan accounts were classified as NPA on 27.09.2018. Thereafter, the Financial Creditor initiated proceedings under the SARFAESI Act by issuing a Demand Notice under Section 13(2). Significantly, the Corporate Debtor, vide its Reply dated 22.04.2019**,** did not dispute either the loan transactions or its liability, but requested the Financial Creditor to keep the recovery proceedings in abeyance as it was making efforts to resolve the matter amicably.

d) The Corporate Debtor has nowhere disputed the availing of the aforesaid credit facilities. On the contrary, in its Counter, written submissions as well as during the course of arguments, it has expressly admitted the borrowings from the Financial Creditor. The record further reveals that after initiation of recovery proceedings, the Corporate Debtor repeatedly submitted OTS proposals, sought extension of the settlement sanctioned by the Financial Creditor and made part-payments. The revival letters, Balance Sheets, replies to the SARFAESI notices, OTS proposals and correspondence exchanged between the parties unequivocally acknowledge the subsistence of the financial liability.

e) The principal defence of the Corporate Debtor is not that no financial debt exists or that no default has occurred. Rather, its case is that the Financial Creditor ought not to have invoked the provisions of the Code while settlement negotiations were continuing. Thus, the defence is directed against the maintainability of the proceedings on account of the OTS negotiations and not against the existence of the financial debt or the occurrence of default.

f) Upon consideration of the entire material placed on record, including the sanction letters, loan and security documents, revival letters, Balance Sheets, acknowledgements of liability, OTS proposals and the correspondence exchanged between the parties, we are satisfied that the Financial Creditor has established the existence of a financial debt within the meaning of Section 5(8) of the Code. The documentary evidence also establishes that the Corporate Debtor committed default in repayment of the said financial debt within the meaning of Section 3(12) of the Code.

g) It is well settled that, while considering an application under Section 7 of the Code, the scope of enquiry under Section 7 is confined to ascertaining the existence of a financial debt and the occurrence of default, as held by the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank*, *(2018) 1 SCC 407***; ***Laxmi Pat Surana v. Union Bank of India*, *(2021) 8 SCC 481*; and *E.S. Krishnamurthy v. Bharath Hi Tech Builders (P) Ltd.*, *(2022) 3 SCC 161***. Once these jurisdictional facts are established, the Adjudicating Authority is not required to enter into disputed questions relating to recovery or other extraneous considerations, except to the limited extent recognised by Law.

h) Accordingly, Issue No. (i) is answered in favour of the Financial Creditor and against the Corporate Debtor**.**

## ii. Limitation

a) The Corporate Debtor has contended that the present Petition is barred by limitation as the Date of Default mentioned in Part IV of Form-1 is 30.06.2018 and the Petition came to be filed only on 05.11.2024. According to the Corporate Debtor, the Petition having been filed beyond three years from the Date of Default is liable to be dismissed under Section 238A of the Code read with Article 137 of the Limitation Act, 1963.

b) The Financial Creditor, on the other hand, has relied upon the revival letters executed by the Corporate Debtor on 08.06.2015 and 04.06.2018, the part-payments made on 07.03.2020, 19.10.2020, 30.12.2020, 26.02.2021, 31.03.2021, 30.06.2021 and 01.07.2021, the Balance Sheets of the Corporate Debtor and the continuous correspondence exchanged between the parties, including the One Time Settlement proposals, to contend that the period of limitation stood extended by virtue of Sections 18 and 19 of the Limitation Act, 1963.

c) It is well settled that an acknowledgment of liability made before expiry of the prescribed period of limitation gives rise to a fresh period of limitation under Section 18 of the Limitation Act. Likewise, a part-payment made before expiry of limitation extends the period under Section 19 of the Limitation Act. The Hon'ble Supreme Court in ***Asset Reconstruction Company (India) Limited v. Bishal Jaiswal, (2021) 6 SCC 366***, has held that entries in duly signed Balance Sheets may constitute acknowledgements of liability for the purposes of Section 18 of the Limitation Act.

d) Apart from the revival letters and part-payments, the Corporate Debtor continued to acknowledge its liability by submitting successive OTS proposals. The record reveals that the Corporate Debtor sought extension of the Compromise vide letter dated 24.01.2023 offering Rs.16.50 crores, which came to be rejected by the Financial Creditor vide Letter dated 15.04.2023. Subsequently, the Corporate Debtor submitted another OTS proposal dated 28.01.2025 offering Rs.14.14 crores, which was rejected by the Financial Creditor vide letter dated 18.02.2025 and again through email dated 28.07.2025. These communications unmistakably demonstrate that the Corporate Debtor never repudiated its liability but continuously acknowledged the outstanding debt and sought concessions regarding its repayment.

e) In view of the revival letters, Balance Sheets, acknowledged part-payments and continuous acknowledgements of liability through OTS proposals and correspondence, this Tribunal is satisfied that the present Petition has been instituted within the period of limitation.

f) Accordingly, Issue No. (ii) is answered in favour of the Financial Creditor.

**iii. Effect of the One Time Settlement and subsequent negotiations**

a) The principal defence of the Corporate Debtor is that the Financial Creditor ought not to have invoked the provisions of Section 7 during the pendency of settlement negotiations and that the OTS constituted a substituted contract under Section 62 of the Indian Contract Act, 1872.

b) It is not in dispute that, at the request of the Corporate Debtor, the Financial Creditor sanctioned a One Time Settlement for Rs.16.16 crores vide letter dated 07.03.2020, which was subsequently extended vide communication dated 03.09.2021 up to 31.03.2022. Pursuant thereto, the Corporate Debtor made part-payment and certain mortgaged properties were also released by the Financial Creditor. However, the Corporate Debtor admittedly failed to comply with the terms of the settlement. Consequently, the Financial Creditor treated the Compromise as having failed and declined further extension. The subsequent OTS proposals submitted by the Corporate Debtor were also rejected. Therefore, no concluded or subsisting settlement was in existence on the date of filing of the present Petition.

c) Thus, no concluded or subsisting settlement existed on the date of filing of the present Petition. Mere negotiations or exchange of settlement proposals cannot create any legal embargo against initiation of proceedings under Section 7 of the Code.

d) The contention regarding novation under Section 62 of the Contract Act is equally devoid of merit. Novation presupposes a valid and enforceable substituted contract completely replacing the original agreement. In the present case, the OTS itself failed on account of non-compliance by the Corporate Debtor. Consequently, the original liability continued to subsist.

e) Equally, the part-payment of approximately Rs.3.02 crores cannot extinguish the default or wipe out the admitted outstanding liability exceeding Rs.79 crores.

f) Accordingly, Issue No. (iii) is answered against the Corporate Debtor.

**iv. Pendency of DRT and SARFAESI proceedings on the Petition**

a) The Corporate Debtor has contended that since proceedings under the SARFAESI Act and the Recovery of Debts and Bankruptcy Act are pending, initiation of CIRP amounts to using the Code as a recovery mechanism.

b) It is also borne out from the record that the Financial Creditor instituted Original Application No.757 of 2019 before the Debts Recovery Tribunal-II, Chandigarh, seeking recovery of Rs.39,91,26,274.15 together with future interest and costs. The said proceedings are stated to be pending adjudication.

c) Proceedings under the SARFAESI Act, proceedings before the Debts Recovery Tribunal and proceedings under the Insolvency and Bankruptcy Code operate in different fields and provide distinct statutory remedies. Merely because recovery proceedings have been initiated under one statute does not preclude a Financial Creditor from invoking Section 7 of the Code upon occurrence of default.

d) It is settled Law that the remedies available under the Code are independent of the remedies available under other statutes. Pendency of proceedings before the DRT or under the SARFAESI Act does not bar initiation of CIRP.

e) Accordingly, the pendency of recovery proceedings before the Debts Recovery Tribunal or measures under the SARFAESI Act does not render the present Petition non-maintainable.

f) Hence, Issue No. (iv) is answered against the Corporate Debtor.

**V. Objections regarding the Statement of Account and Record of Default**

a) The Corporate Debtor has questioned the admissibility of the Statement of Account on the ground that it is not duly certified. Similar objection has been raised regarding the NeSL Record of Default.

b) Firstly, the existence of the financial debt and the occurrence of default are admitted by the Corporate Debtor. The controversy raised by the Corporate Debtor relates primarily to the quantum claimed by the Financial Creditor and not to the existence of the debt itself.

c) Secondly, the Financial Creditor has relied not merely upon the Statement of Account or the Record of Default but also upon the sanction letters, loan documents, mortgage documents, revival letters, acknowledgements, Balance Sheets, SARFAESI proceedings, OTS correspondence and other documentary evidence.

d) The Financial Creditor has also placed on record the Record of Default generated through the National E-Governance Services Limited (**NeSL**), which was authenticated on 18.07.2021. Be that as it may, even independent of the said Record of Default, the sanction letters, loan and security documents, revival letters, Balance Sheets, SARFAESI proceedings, OTS correspondence and other documentary evidence are sufficient to establish the existence of the financial debt and the occurrence of default.

e) Accordingly, these objections do not affect the maintainability of the present Petition.

f) Issue No. (v) is answered against the Corporate Debtor.

**vi. Applicability of '*Vidarbha Industries*' case**

a) The decision in ***Vidarbha Industries,*** supra, turned on highly exceptional facts where the corporate debtor had already succeeded before the Appellate Tribunal and was entitled to receive a substantial amount, far exceeding the debt claimed by the Financial Creditor. The only reason for non-payment was the pendency of further proceedings.

b) No such circumstance exists in the present case. The Corporate Debtor has not demonstrated the existence of any crystallised receivable or any other exceptional circumstance which would render admission of the Petition manifestly unjust. The only ground urged is pendency of settlement negotiations, which, by itself, cannot justify refusal of admission.

c) Furthermore, subsequent decisions of the Hon'ble Supreme Court have clarified that ***Vidarbha Industries***, supra, cannot be treated as laying down a general proposition that admission under Section 7 becomes discretionary in every case once debt and default are established.

d) Consequently, the judgment in ***Vidarbha Industries,*** supra, has no application to the facts of the present case.

e) Accordingly, Issue No. (vi) is answered against the Corporate Debtor.

## 9. FINAL ORDER

In view of the foregoing discussion and the findings recorded on the issues framed above, this Tribunal is satisfied that the Financial Creditor has established the existence of a financial debt and the occurrence of default. The Corporate Debtor has throughout acknowledged its liability by executing revival letters, reflecting the borrowings in its Balance Sheets, making part-payments and repeatedly submitting One Time Settlement proposals. The present Petition is within the period of limitation. The pendency of proceedings before the Debts Recovery Tribunal and under the SARFAESI Act does not constitute a bar to the maintainability of the present proceedings. The objections regarding the Statement of Account, the Record of Default and the applicability of ***Vidarbha Industries Power Limited,*** *supra,* are devoid of merit. The Petition satisfies all the requirements prescribed under Section 7 of the Insolvency and Bankruptcy Code, 2016, and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.

Accordingly, the present Company Petition deserves to be admitted. We pass the following directions:

i. The present Petition is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (**CIRP**), which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this Order is passed.

ii. The FC has proposed the name of **Mr.Hemanshu Jetley,** having **Registration No.: IBBI/IPA-001/IP-P-00219/2017-2018/10457, Address: SCO 818, 1st Floor, NAC, Manimarja, Chandigarh – 160 101, email: hejetley@gmail.com, Mobile No:90417 00000,** whose AFA as per the IBBI Website is valid up to 30.06.2027 as the Interim Resolution Professional (**IRP**). The proposal to appoint Mr.Hemanshu Hetley as IRP is approved. The proposed IRP has filed Form No.2 alongwith Registration Certificate, Authorisation for Assignment and KYC Documents @ pgs.68 to 74 of the petition.

iii. The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He is also directed to cause a public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this Order, and call for submissions of claim in the manner as prescribed.

iv. Moratorium is hereby declared and shall have effect from the date of this Order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:

a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor, including execution of any judgment, decree, or order in any Court or 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 rights or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property, including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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

e. Notwithstanding anything contained in any other Law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, Sectoral Regulator or any other Authority constituted under any other Law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

a) The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other Authority.

b) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2106. The Directors, Promoters or any other person associated with the management of the Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the Code, 2016.

c) The FC as well as the Registry is directed to send a copy of this Order to the IRP, to enable him to take charge of the assets, etc. of the Corporate Debtor, and comply with this Order as per the provisions of the Code, 2016.

d) The Registry is directed to communicate this Order to the FC.

e) The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor on the website of the Ministry of Corporate Affairs.

**10.** Accordingly, this Petition is hereby **allowed** and disposed of.

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| **Sd/-** | **Sd/-** |
| **( SANJAY PURI )**<br>**MEMBER (TECHNICAL)** | **( RAJEEV BHARDWAJ)**<br>**MEMBER (JUDICIAL)** |

**Syamala**