IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

IB-485 (ND)/2025

IN THE MATTER OF IB-485(ND)/2025:

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED

(In its capacity as Trustee of NARCL Trust - 0019)
Represented by Power of Attorney holder
India Debt Resolution Company Limited ..... **Financial Creditor**

Versus

WEST HARYANA HIGHWAYS PROJECT PRIVATE LIMITED

..... **Corporate Debtor**

Order Pronounced On: 15.10.2026

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI RAVINDRA CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant: Mr. Abhishek Anand, Ms. Smriti Churiwal, Mr. Jaiveer, Ms. Vidisha, Ms. Meher, Ms. Palak, Advs

For the Respondent : Mr. Siddharth Yadav, Sr. Adv, Ms. Divya Verma, Ms. Vaishnavi, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by Applicant, National Asset Reconstruction Company Limited (NARCL) a public limited company incorporated under the Companies Act, 2013 and registered as an Asset Reconstruction Company pursuant to Section 3 of the SARF AESI Act, 2002, acting in its capacity as a trustee of NARCL Trust - 0019 being represented through the authorized representative of its Power of Attorney Holder viz. IDRCL, , seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against West Haryana Highways Project Private Limited ("WHHPPL/ Corporate Debtor"). The amount claimed to be in default as mentioned is part IV of the Application is Rs. 17,10,00,62,484/- (Rupees One Thousand Seven Hundred Ten Crores Sixty Lakhs Sixty-Two Thousand Four Hundred Eighty-Four Only) as on 28.02.2025 which is inclusive of interest and penal interest, the Principal Amount being Rs. 3,85,90,52,099/- (Rupees Three Eighty-Five Crores Ninety Lakhs Fifty-Two Thousand Ninety-Nine Only).

Brief Background

2. The National Highways Authority of lndia ("NHAI"), invited bids through a Request for Proposals ("RFP") for the development of a project involving four/six-laning of the Delhi-Haryana Border to Rohtak section including the Bahadurgarh and Rohtak Bypasses on NH-10, covering an approximate length of 83.49 km (from Km 29.700 to Km 87.000) ("Project") on a Build, Operate and Transfer ("BOT') basis.

3. Pursuant to the issuance of the RFP by NHAI and discussions held between the interested entities, a Memorandum of Understanding dated 23.02.2007 ("MoU') was executed between M/s Karam Chand Thapar & Bros. (C.S.) Ltd. and M/s Era Constructions (India) Limited (now EIEL) for the purpose of forming a consortium to bid for and for implementation of the Project. Under the said MoU the parties agreed to jointly participate in the bidding process and, upon award of the Project, to incorporate a Special Purpose Vehicle ("SPV'') for the implementation of the Project.

4. NHAI by its Letter of Acceptance ("LOA") dated 05.07.2007 informed the Consortium that its bid submitted on 28.02.2007 for the Project had been accepted, thereby declaring the Consortium as the successful bidder. M/s. Era Infra Engineering Limited ("EIEL") incorporated the Respondent/ Corporate Debtor (West Haryana Highway Project Private Limited) as a SPV to fulfil the contractual Obligation of the MoU. The Respondent/ Corporate Debtor (West Haryana Highway Project Private Limited) is a company incorporated under the Companies Act, 1956.

SUBMISSIONS OF THE APPLICANT

5. It is submitted that to finance the aforesaid Project the Corporate Debtor entered into a Common Loan Agreement for Senior Loan with a consortium of Banks, namely Punjab National Bank, Central Bank of India, State Bank of Patiala (now State Bank of India) and Dena Bank (now Bank of Baroda), and India Infrastructure Finance Company Ltd. ("Senior Banks"). Vide the Common Loan Agreement, the Senior Banks granted the Corporate Debtor term Loan for an amount of Rs. 410.23

Crore (Rupees Four Hundred and Ten Crore and Twenty-Three Lakh) as well as a Bank Guarantee Facility of Rs. 24.30 Crore (Rupees Twenty Four Crore and Thirty Lakh Only).

6. It is submitted that pursuant to the execution of Common Loan Agreement for Senior Loan dated 02.05.2008, the Senior Banks and the Corporate Debtor entered into an Inter-Se Agreement to appoint Punjab National Bank ("PNB") as the Lead Bank and Escrow Agent and IL&FS Trust Company Limited ("ITCL") as the Security Agent.

7. It is submitted that in compliance with the conditions of the Common Loan Agreement for Senior Loan dated 02.05.2008, the Corporate Debtor executed a Joint Deed of Hypothecation in favour of the Security Agent for the Senior Rupee Term Loan of Rs. 410 .23 Crore (Rupees Four Hundred and Ten Crore and Twenty-Three Lakh Only) providing them first pari passu charge on the hypothecated assets.

8. It is submitted that for the purpose of securing further finance for the Project, the Corporate Debtor approached another consortium of banks namely Bank of India, Oriental Bank of Commerce (now Punjab National Bank), UCO Bank, Central Bank of India, Vijaya Bank (now Bank of Baroda), Bank of Maharashtra, Dena Bank (now Bank of Baroda), United Bank of India (now Punjab National Bank), Corporation Bank (now Union Bank of India), Canara Bank, Syndicate Bank (now Canara Bank) ("Original Subordinate Banks").

9. It is submitted that Original Subordinate Banks through IL&FS Trust Company Limited ("ITCL") acting as their Facility Manager, and the

Lender's Agent entered into a Common Loan Agreement for Original Subordinated Loan with the Corporate Debtor, thereby extending a Rupee Loan to the amount of Rs. 29.30 crores (Rupees Twenty-Nine Crore Thirty Lakh Only).

10. It is submitted that subsequent to the Common Loan Agreement for Original Subordinate Loan dated 02.05.2005, a Security Trustee Agreement was executed between the Corporate Debtor, the Original Subordinate Banks represented through their Facility Manager, and the Lender's Agent to appoint ITCL as the Security Trustee for the Original Subordinate Loan

11. It is submitted that on 29.09.2008, Senior Banks and the Corporate Debtor executed the First Supplementary Loan Agreement to the Common Loan Agreement for Senior Loan dated 02.05.2008.

12. It is submitted that on 07.10.2008, In compliance with the condition laid out in the Common Loan Agreement for Senior Loan dated 02.05.2008, Era Infra Engineering Ltd. ("EIEL"), a promoter entity of the Corporate Debtor executed a Deed of Pledge in favour of the Security Agent of the Senior Banks inter alia pledging 51 % of the issued and fully paid-up equity shares of the Corporate Debtor in favour of the Senior Banks.

13. It is further submitted that on 02.02.2009, in consideration of the riginal Subordinate Loan granted to the Corporate Debtor, Mr. Hem Singh Bharana, a director of the Corporate Debtor executed an unconditional and irrevocable Personal Guarantee in favour of the

Security Trustee for and on behalf of the Original Subordinate Banks thereby guaranteeing to pay the Original Subordinate Loan of Rs. 29.30 Crore (Rupees Twenty-Nine Crore and Thirty Lakh Only) within 24 hours of demand by the Original Subordinate Banks or the Security Trustee.

14. It is submitted that on 09.04.2009, in order to modify and amend the Common Loan Agreement for Original Subordinate Loan dated 02.05.2008, an Amendatory Common Loan Agreement was executed between the Corporate Debtor, the Original Subordinate Banks through their Facility Manager and the Lender's Agent. This Amendatory Common Loan Agreement is to be read as supplemental to the Common Loan Agreement for Subordinate Debt dated 02.05.2008.

15. It is submitted that on 02.07.2009, to comply with one of the conditions laid out in the Common Loan Agreement for Original Subordinate Loan dated 02.05.2008 and provide security against the Loan amounting to Rs. 29.30 Crore (Rupees Twenty-Nine Crores Thirty Lakhs Only), BIEL and Karam Chand Thapar & Bros (CS) Limited, promoter entities of the Corporate Debtor executed a Deed of Pledge thereby collectively pledging 51 % of the issued and paid-up capital held by them in favour of the Security Trustee of the Original Subordinate Banks. Further, as per the terms of the Common Loan Agreement for Original Subordinate Loan dated 02.05.2008, the Corporate Debtor executed a Deed of Hypothecation in favour of Security Trustee of the Original Subordinate Banks to secure the

Original Subordinate Loan of Rs. 29.30 Crore (Rupees Twenty-Nine Crores Thirty Lakhs Only) inter alia providing them second pari passu charge over the hypothecated assets.

16. It is submitted that as per the Concession Agreement dated 06.11.2007, original Commercial Operations Date ("COD") of the Project which could not be met due to delays in the completion of the Project. The said delays resulted in the enhancement of the Project Cost from Rs. 586.05 Crore (Rupees Five Hundred Eighty-Six Crores Five Lakhs Only) to Rs. 1075.96 Crores (Rupees One Thousand Seventy-Five Crores Ninety-Six Lakhs Only).

17. It is submitted that on 29.11.2023 the Corporate Debtor and the Senior Banks executed a Funded Interest Term Loan Agreement inter alia sanctioning a Funded Interest Term Loan Facility amounting to Rs. 44.75 Crores (Rupees Forty-Four Crores Seventy-Five Lakhs Only) by the entire Senior Bank consortium.

18. It is submitted that owing to the default in payments by the Corporate Debtor, Bank of Baroda declared the account of the Corporate Debtor as Non-Performing Asset ("NPA") ON 27.12.2013.

19. It is submitted that due to an enhancement in the Project Cost, the Corporate Debtor approached the Senior Banks for further financial assistances for a grant of Rs. 18.84 Crore (Rupees Eighteen Crore and Eighty-Four Lakh Only) as Additional Rupee Term Loan ("Additional Loan"). Accordingly, the Corporate Debtor and the Senior Banks executed a Second Supplementary Loan Agreement to the Common

Loan Agreement for Senior Loan dated 02.05.2008 to incorporate the Additional Loan, thereby revising the Rupee Term Loan to Rs. 429.07 Crore (Rupees Four Hundred Twenty-Nine Crores Seven Lakhs Only). Further in pursuance of Second Supplementary Loan Agreement, the Senior Banks, the Escrow Agent, the Security Agent and the Corporate Debtor executed a Supplementary Inter-Se Agreement to incorporate the Additional Loan amounting to Rs. 18.84 Crore (Rupees Eighteen Crores Eighty-Four Lakhs Only).

20. It is submitted that on 31.01.2014, to provide security for the Additional Loan, the Corporate Debtor executed a Supplementary Joint Deed of Hypothecation in favour of the Security Trustee of the Senior Banks thereby extending the pari passu charge on the hypothecated assets for the additional Loan as well. Further to amend and extend the Deed of Pledge dated 07.10.2008 and to provide security against the Revised Rupee Loan amounting to Rs. 429.07 Crore (Rupees Four Hundred Twenty-Nine Crores Seven Lakhs Only), EIEL executed a Supplementary Deed of Pledge in favour of the Security Agent of the Senior Banks.

21. It is submitted that EIEL also executed an Agreement of Guarantee in favour of the Security Agent of the Senior Banks thereby guaranteeing to pay the Revised Rupee Loan of Rs. 429.07 crores (Rupees Four Hundred and Twenty-Nine Crore and Seven Lakh Only) to the Senior Bank.

22. It is submitted that on 25.02.2014 Corporate Debtor approached the Original Subordinate Banks for restructuring the Original Subordinate

Loan and requested for a Fixed Interest Term Loan account for an amount of Rs. 3.61 crores (Rupees Three Crores Sixty-One Thousand Only). Accordingly, to incorporate the abovementioned facility in the Common Loan Agreement for Original Subordinate Loan, the Second Amendatory Common Loan Agreement to the Common Loan Agreement for Original Subordinate Loan dated 02.05.2008 was executed between the Corporate Debtor, the Original Subordinate Banks through their Facility Manager, and the Lender's Agent and the Corporate Debtor executed a Supplementary Joint Deed of Hypothecation in favour of the Security Trustee of the Original Subordinate Banks.

23. It is further submitted that 25.02.2014 Mr. Hem Singh Bharana executed an Agreement of Guarantee in favour of the Security Trustee of the Original Subordinate Banks inter alia guaranteeing due payment of the Fixed Interest Term Loan Facility of Rs. 3.61 Crores (Rupees Three Crores Sixty-One Thousand Only) granted to the Corporate Debtor by the Original Subordinate Banks and a Supplementary Deed of Pledge was executed by EIEL in favour the Security Trustee of the Original Subordinate Banks.

24. It is submitted that on 21.03.2014 subsequent to the Funded Interest Term Loan Agreement dated 29.11.2013, the Corporate Debtor and the Senior Banks executed the Third Supplementary Agreement thereby amending the Common Loan Agreement dated 02.05.2008 to include the Funded Interest Term Loan of Rs. 44.75 crores (Rupees Forty-Four Crores Seventy-Five Lakhs Only).

25. It is submitted that owing to the default in payments by the Corporate Debtor, the account of the Corporate Debtor declared as NPA, by Banks which is as under :

Date of declaration as NPA	Name of Bank/Financial Institution
01.05.2014	Central Bank of India
29.06.2024	State Bank of India
30.03.2015	India Infrastructure Finance Company Limited (IIFCL)
30.06.2016	Punjab National Bank

26. It is submitted that a Recall Notice dated 14.03.2017 was addressed to the Corporate Debtor by Canara Bank thereby calling upon the Corporate Debtor to repay a sum of Rs. 4,39,83,781/- (Rupees Four Crores Thirty Nine Lakhs Eighty-Three Thousand Seven Hundred Eighty One Only) within 15 days.

27. It is submitted that on 27.04.2018 Dena Bank (now Bank of Baroda) addressed a Recall Notice cum Invocation of Guarantee Letter upon the Corporate Debtor along with EIEL and Mr. Amit Bharana thereby calling upon them to repay a sum of Rs. 42,44,00,000/- (Rupees Forty-Two Crores Forty-Four Lakhs Only) along with further accrued interest within 7 days.

28. It is submitted that on 18.05.2018 PNB addressed a demand letter to the Corporate Debtor inter alia calling upon them to repay a sum of Rs. 178,62,58,182/- (Rupees One Hundred Seventy-Eight Crore Sixty-Two Lakhs Fifty-Eight Thousand One Hundred and Eighty-Two Only) along with interest within 4 days.

29. It is submitted that on 22.05.2018 Central Bank of India addressed a letter to the Guarantor i.e., Mr. Hem Singh Bharana and the Corporate Guarantor i.e., BIEL calling upon them to repay the facilities granted to the Corporate Debtor amounting to a sum of Rs. 157,87,03,126/- (Rupees One Hundred Fifty-Seven Crores Eighty-Seven Lakhs Three Thousand One Hundred Twenty-Six Only) plus interest within 3 days.

30. It is submitted that on 24.08.2018 India Infrastructure Finance Company Limited addressed a Recall Letter and Invocation of Guarantee Notice to the Corporate Debtor, BIEL, Mr. Hem Singh Bharana and Mr. Amit Bharana calling upon them to repay a sum of Rs. 182,65,40,765/- (Rupees One Hundred Eighty-Two Crores Sixty-Five Lakhs Forty Thousand Seven Hundred Sixty-Five Only) along with interest within 7 days.

31. It is submitted that on 08.01.2019 State Bank of India addressed a Recall Notice upon the Corporate Debtor inter alia calling upon the Corporate Debtor to repay a sum of Rs. 71,59,64,285.47/- (Rupees Seventy-One Crores Fifty-Nine Lakhs Sixty-Four Thousand Two Hundred Eighty-Five and Forty-Seven Paise Only) along with interest within 7 days.

32. It is submitted that on 27.06.2020 NHAI addressed a letter to the Corporate Debtor cancelling its rights under the Concession Agreement.

33. It is submitted that the Corporate Debtor has acknowledged its liabilities and admitted its default in its Balance Sheet for the Financial Year 2014-2015, 2017-2018, 2018-2019, 2019-2020, 2020-2021, and 2021-2022.

34. It is submitted that this Adjudicating Authority vide order dated 11.06.2024 admitted EIEL into CIRP pursuant to a Section 7 application filed by Union Bank of India. Following the substitution of erstwhile lenders through a Joint Assignment Agreement, the Applicant has received Rs. 13,86,013.23/- (Rupees Thirteen Lakhs Eighty-Six Thousand and Thirteen) and 13,860 shares (with face value of INR 10 each) of EIEL in accordance with the approved Resolution Plan.

35. It is submitted that the Senior Banks and the Subordinate Banks assigned their loans granted to the Corporate Debtor to the Financial Creditor vide Assignment Agreement dated 28.06.2024. Accordingly, loans worth Rs. 498.12 Crore (Rupees Four Hundred Ninety-Eight Crores Twelve Lakhs Only) towards Senior Loan and Loans worth Rs. 21.10 Crore (Rupees Twenty-One Crores Ten Lakhs Only) towards Subordinate Loan were assigned to the Financial Creditor.

SUBMISSIONS OF THE RESPONDENT/CORPORATE DEBTOR

36. It is submitted that EIEL and the Respondent entered into an Engineering Procurement Contract dated on 21.03.2008 ("EPC'), wherein EIEL being the parent company played an indispensable role in financing and operating the framework of the Project.

37. It is submitted that for the purpose of financing the aforesaid Project, the Respondent entered into a Common Loan Agreement dated 02.05.2008 (CLA-I) with a consortium of Senior Lenders, led by Punjab National Bank as the Lead Bank, a separate Common Loan Agreement ("CLA-II") dated 02.05.2008 with another consortium of lenders, i.e. Bank of India, Oriental Bank of Commerce (now Punjab National Bank), Indian Bank, Infrastructure Leasing and Financial Services Limited, UCO Bank, Indian Overseas Bank, Central Bank of lndia, Vijaya Bank (now Bank of Baroda), Bank of Maharashtra, Dena Bank (now Bank of Baroda), United Bank of lndia (now Punjab National Bank), Corporation Bank (now Union Bank of India), Syndicate Bank, Canara Bank ("Subordinate Banks"). Further on 29.09.2008 a Supplementary Common Loan Agreement and on 09.04.2024 amendatory common loan agreement was executed.

38. It is submitted that the original Project cost, as approved under the Concession Agreement dated 06.11.2007, was Rs. 586.05 Crores (Rupees Five Hundred Eighty-Six Crores and Five Lakhs Only). However, due to substantial delays arising from NHAI's failure to take possession of approximately 0.94% of the land, resulting in delay in the Commercial Operations Date ("COD") subsequently there was significant escalation of the Project cost to Rs. 1075.96 Crores (Rupees

One Thousand Seventy-Five Crores and Ninety-Six Lakhs Only). In view of the increase in time and cost, the Senior Banks sanctioned an Additional Rupee Term Loan of Rs. 18.84 Crores, which was duly incorporated through the Second Supplementary Agreement to the CLA-I, dated31.01.2014. Further, on account of the delay of COD there was an accumulation of unrecovered interest for the period between 01.07.2013 and 30.04.2014, the Senior Banks extended a Funded Interest Term Loan ("FITL") facility of Rs. 44. 75 Crores which was incorporated and made part of the financing structure under the Third Supplementary Agreement dated 21.03.2014, executed in continuation of the CLA-I.

39. It is submitted that vide order dated 08.05.2018, Corporate Insolvency Resolution Process ("CIRP") was initiated against EIEL by this Adjudicating Authority (Bench-V) in C.P. (IB) No. 190/PB/2017 titled Union Bank of India vs. Era Infra Engineering Limited. Vide order dated 11.06.2024 this Adjudicating Authority (Bench-V) in I.A. No. 1334/ND/2023 along with I.A. No. 5241/ND/2023 in C.P. IB-190/PB/2017 approved the Resolution Plan submitted by SA Infrastructure Consultants Private Limited for Era Infra Engineering Limited.

Debt stood admitted, dealt with and subsumed under the approved Resolution Plan Of Era Infra Engineering Limited, which is binding under section 31 of the code

40. It is submitted that EIEL is the parent Company of the Respondent and in the Resolution Plan of the EIEL it has been clarified that the

Respondent being the SPV of EIEL has been taken over by the new management of EIEL. Further, in the Resolution Plan of EIEL, approved by this Adjudicating Authority and implemented, clearly stated that Resolution Applicant after taking control of EIEL will cause EIEL to take over the control of its subsidiaries and SPVs including the Respondent. The relevant paragraph of the approved Resolution Plan in the CIRP of EIEL has been reproduced below for ready reference: -

"10. Take over the management control of the subsidiaries and special purpose vehicles of the Corporate Debtor, replacement of the directors on their respective boards and completion the necessary statutory filings as per Applicable Law.

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2.6 This Plan has dealt with the interest of all stakeholders (including the Financial Creditors, Operational Creditors, Other Creditors, guarantors, members, employees, partners (if any) of special purpose vehicles, parent company and other stakeholders of the Corporate Debtor)."

41. It is submitted that vide Joint Assignment Agreement dated 28.06.2024 the Assignor Banks assigned, sold and transferred to NARCL all their rights, title and interest in the identified non-performing loan accounts, including all amounts due in favor of the Financial Creditor i.e. National Asset Reconstruction Company Limited. The Resolution Plan of the EIEL provides that the Unsecured Financial Creditors (which includes the Assignor Banks herein) shall

get 10% from the arbitral proceeds in pro rata manner and the remaining balance shall be converted into 1% equity which was approved by the Assignor Bank. Applicant, after the assignment of debt in favour has stepped into the shoes of the Assignor Bank, and thus, it cannot go beyond the decision which were taken by its assignees.

42. It is submitted that pursuant to the approval of the Resolution Plan of the EIEL vide Order dated 11.06.2024 passed by this Adjudicating Authority, the Assignor Bank has already been paid as per terms of the said Resolution Plan thereby settling the debt owed by WHHPPL. The entire debt claimed by the assignor banks in the CIRP of the EIEL (which included the debt of the WHHPPL herein) has been admitted and dealt with in the CIRP of EIEL.

43. It is submitted that the Resolution Plan of the EIEL provided that the unsecured Financial Creditors shall get 10% of the arbitral proceeds in pro rata basis and the balance amount shall be converted into 1 % equity shares. In this regard, a communication dated 16.10.2025 was issued in relation to preferential allotment records which reflects that equity shares of the Applicant were credited in the depository system pursuant to corporate action executed through the Registrar and Transfer Agent, Beetal Financial & Computer Services Pvt. Ltd. in favor of the Respondent. The said intimation specifies that shares bearing ISIN INE039E01038 were credited on 16.10.2025 in favor of the Assignor Banks, thereby evidencing implementation of a corporate

restructuring step involving issuance and allotment of equity securities.

Claims against the Respondent stand extinguished as there is an approved Resolution Plan of EIEL

44. It is submitted that all claims relating to the Answering Respondent stood duly subsumed and addressed under the Resolution Plan of EIEL inasmuch as the said **Resolution Plan** expressly envisaged satisfaction of the creditors of EIEL through sharing of the proceeds arising from arbitral awards obtained in favour of EIEL and its Special Purpose Vehicles, which specifically included the arbitral proceeds pertaining to the Respondent.

45. It is submitted that the Applicant was, at all material times, fully aware that the proceeds generated from the Respondent were earmarked for the resolution of EIEL, thereby leaving the Respondent with no residual assets or independent recoverable value.

46. It is submitted that a Sharing of Arbitral Proceeds Agreement ("SAP Agreement") dated 05.09.2024 was executed between EIEL and the assenting financial creditors, which expressly included the Applicant, i.e., NARCL. The SAP Agreement categorically stipulated that the arbitral proceeds arising from the Respondent were to be utilised exclusively towards satisfaction of the claims of the financial creditors admitted in the CIRP of EIEL.

47. It is submitted that the Applicant, as assignee of the debt from the original lenders, has itself acknowledged and accepted the intrinsically

intertwined business and financial structure of EIEL and the Answering Respondent. This acknowledgment is evident from the Flash Report submitted by EIEL to the Corporate Debt Restructuring Cell of the consortium of lenders, which explicitly recorded the interdependence between EIEL and the Answering Respondent. It was only upon due consideration of the said Flash Report that the CDR Cell approved the restructuring of EIEL's debt.

48. It is submitted that the assignor banks of the **Applicant had already filed their entire claims, including the portions attributable to the Respondent, before the Resolution Professional of EIEL by submitting Form C under Regulation 8 of the CIRP Regulations. The Financial Creditors had specifically included the claims within the total debt claimed in the CIRP of EIEL.** This clearly establishes that the debt now sought to be enforced through the present Application under Section 7 of the Code has already been claimed, admitted and addressed under the approved Resolution Plan of EIEL.

Present proceedings are barred by Doctrine of Res Judicata

49. It is submitted that consortium of lenders, including the assignor banks of the Applicant, elected to invoke CIRP against EIEL, the said lenders duly submitted their claims, were part of the Committee of Creditors of EIEL for this debt, participated in the decision-making process, and ultimately approved the Resolution Plan of EIEL. The lenders treated EIEL and its Special Purpose Vehicles, including the Answering Respondent, as an integrated and interdependent financial

and operational structure, and consciously chose to enforce their rights and remedies through the resolution of EIEL.

50. It is submitted that the issues pertaining to the debt now sought to be enforced against the Respondent stood finally and conclusively adjudicated under the CIRP of EIEL. Consequently, the present application under Section 7 of the Code, based on the same cause of action and the same underlying debt, is barred by the principle of res judicata, and in any event by constructive res judicata, as the Applicant's assignors had both the opportunity and obligation to raise all claims and remedies in the earlier proceedings.

Applicant is estopped to Approbate and Reprobate after acceptance Of Resolution Plan

51. It is submitted that having approbated the Resolution Plan of EIEL, wherein the debt pertaining to Respondent stood addressed, the Applicant cannot now reprobate by initiating a separate Section 7 application for the same debt.

Admission of this Petition will affect the implementation of the approved Resolution Plan of EIEL

52. It is submitted that Resolution Plan of EIEL is based on the pooling of cash flow and receivables from EIEL and its SPV s, including the Respondent. It is further submitted that the SAP Agreement is an integral part of the Plan's implementation. If the Respondent is admitted into CIRP the flow of arbitral proceeds to EIEL will stop, the

SAP Agreement will collapse, resulting to the failure of the Resolution Plan.

53. It is submitted that it is a settled position of law that the lenders cannot recover the same debt from different parties to receive more than what they actually owed to the lender. However, in the present case, the Applicant has failed to disclose that it has already recovered a substantial amount of debt in the form of shareholding in EIEL in December 2024 against the same debt that is in question. Moreover, pursuant to the Resolution plan the Applicant will also receive a share in the Arbitral proceeds from the Arbitration of Respondent. Therefore, the Applicant cannot claim the same amount which has already been recovered from the debt in question from the Respondent.

REJOINDER BY FINANCIAL CREDITOR

54. It is submitted that similar to the present Corporate Debtor, other subsidiary companies/SPVs were also created by EIEL. The said subsidiaries include Bareilly Highways Project Ltd. ("BHPL") and Haridwar Highways Project Ltd. ("HHPL"). BHPL and HHPL were also assigned loans by various consortium of banks with respect to their construction projects and the loan facilities of the said subsidiaries were also assigned to the Applicant.

55. It is submitted that contention with respect to debt exposure being subsumed under Resolution Plan of EIEL has already been dispelled by this Tribunal and Hon'ble National Company Law Appellate Tribunal ("NCLAT") in matters pertaining to other SPVs/subsidiaries.

a. The same contention has already been raised by other subsidiaries/SPVs of EIEL i.e., BHPL and HHPL .Both BHPL and HHPL have been admitted into CIRP in CP(IB) No. 243 of 2023 and C.P. (IB) No. 777 of 2024 by this Adjudicating Authority, vide order dated 23.09.2024 and 04.11.2025 respectively, despite similar defences being raised with respect to the Resolution Plan of EIEL subsuming the debt of the said entities. Hence, it is apparent that there have been continuous findings of debt and default against the subsidiaries/SPVs of EIEL despite the Resolution Plan being approved.

b. It is submitted that this whole submission has, in fact, been an afterthought by the new management of EIEL who had at one stage made multiple attempts to settle the debts of the subsidiaries/SPVs.

c. It is submitted that on 10.10.2024, Appeal no. CA(AT)(Ins) No. 1930 of 2024 was filed by the suspended management of BHPL / SA Infra / EIEL challenging the Order dated 23.09.2024 passed in CP(IB) No. 243 of 2023 and Hon'ble NCLAT vide order dated 24.03.2025 upheld the Order dated 23.09.2024 and dismissed CA(AT)(Ins) No. 1930 of 2024.

d. It is submitted that order dated 04.11.2025 passed in C.P. (IB) No. 777 of 2024 was challenged by the suspended management of HHPL/EIEL/SA infra and EIEIL separately by way of CA(AT)(Ins.) No. 1695 of 2025 and CA(AT)(Ins) No. 1697 of 2025 before the Hon'ble NCLAT. Hon'ble NCLAT vide order dated

12.03.2026 upheld the Order dated 04.11.2025 and dismissed CA(AT)(Ins.) No. 1695 of 2025 and CA(AT)(Ins) No. 1697 of 2025.

56. It is submitted that Claims filed by the assignors of the Applicant in the CIRP of EIEL with respect to the Corporate Debtor were in fact claims which were in nature of amounts to be sought from EIEL in its capacity as Corporate Guarantor of the Corporate Debtor who was in default even at the time of admission of EIEL. Under the CIRP of EIEL, the Applicant has received a sum of Rs. 13,86,013/- (Rupees Thirteen Lakh Eighty-Six Thousand Thirteen Only) and after adjusting the said sum, has filed the present Section 7 Application against the Principal Borrower i.e., the Corporate Debtor in regard to the balance debt.

57. It is submitted that the interpretation and understanding of the Corporate Debtor with respect to Resolution Plan of EIEL would render the Plan illegal and contrary to the approval Order dated 11.06.2024 passed by this Tribunal in CP(IB) No. 190 of 2017. The inference sought to be given by the Corporate Debtor is that the proceeds/receivables from the Arbitration Proceedings of the Corporate Debtor would also be included in the Resolution Plan of EIEL. It is submitted that there is no group insolvency of EIEL and its other group concerns.

58. It is submitted that Information Memorandum of EIEL in fact has created a specific distinction between the Arbitral Proceeds to be received by EIEL and its subsidiaries/SPVs which clearly evidences that the Arbitral Proceeds mentioned in the Resolution Plan of EIEL in fact only relate to proceeds to be received by EIEL in the specific project

being carried by the SPV, in its capacity as the EPC Contractor. Thus, there is a distinction between the proceeds to be received by EIEL and the SPV.

59. Analysis and Findings

i. We have heard the submissions of Ld. Counsel appearing on behalf of the Applicant as well as the Respondents and perused the records.

ii. The Corporate debtor has neither pleaded that amount in default has been paid nor placed any material on record to suggest that amount in debt has been paid to the Financial Creditor. The Corporate debtor has not disputed the execution of following documents :

a. Common Loan Agreement for Senior Loan dated 02.05.2008.
b. First Supplementary Agreement dated 29.09.2008 to Common Loan Agreement for Senior Loan.
c. Amendatory Common Loan Agreement dated 09.04.2009 to Common Loan Agreement for Senior Loan.
d. Second Supplementary Agreement dated 31.01.2014 to Common Loan Agreement for Senior Loan.
e. Third Supplementary Agreement dated 21.03.2014 to Common Loan Agreement for Senior Loan.
f. Common Loan Agreement for Subordinate Loan dated 02.05.2008.
g. Amendatory Common Loan Agreement dated 09.04.2009 to Common Loan Agreement for Subordinate Loan.
h. Amendatory Common Loan Agreement dated 25.02.2014 to Common Loan Agreement for Subordinate Loan.

i. Recall Notice cum Guarantee Invocation Notice dated 27.04.2018 addressed by Dena Bank to the Corporate Debtor, EIEL and Mr. Amit Bharana.

j. Demand Letter dated 18.05.2018 addressed by Punjab National Bank to the Corporate Debtor.

k. Letter dated 21.05.2018 addressed by Central Bank of India to Mr. Hem Singh Bharana and EIEL.

l. Letter dated 22.05.2018 addressed by Central Bank of India to Mr. Amit Bharana.

m. Recall Letter and Invocation of Guarantee Notice dated 28.08.2018 addressed by India Infrastructure Finance Company Limited to the Corporate Debtor, EIEL, Mr. Hem Singh Bharana and Mr. Amit Bharana.

n. Recall Notice dated 08.01.2019 addressed by the State Bank of India to the Corporate Debtor.

o. Assignment Agreement dated 28.06.2024.

p. Balance Confirmation Letter dated 04.11.2024 written by the Applicant/West Haryana Highways Projects Private Limited to National Asset Reconstruction Company Ltd. confirming the principle outstanding amount of Rs.385, 90, 52,099/- (Rupees Three Hundred Eighty Five Crores Ninety Lacks Fifty Two Thousand Ninety Nine Only) plus interest as per loan agreement.

q. Joint Deed of Hypothecation dated 02.05.2008 executed by the Corporate Debtor in favour of IL&FS Trust Company Ltd. (ITCL), acting as the Security Agent of the Senior Banks.

r. Deed of Pledge dated 07.10.2008 executed by Era Infra Engineering Ltd. in favour of ITCL, acting as Security Agent of the Senior Banks.

s. Supplementary Joint Deed of Hypothecation dated 31.01.2014, executed by the Corporate Debtor in favour of ITCL acting as the Security Agent of the Senior Banks.

t. Supplementary Deed of Pledge dated 31.01.2014 executed by Era Infra Engineering Ltd. in favour of ITCL, acting as Security Agent of the Senior Banks.

u. Second Supplementary Joint Deed of Hypothecation dated 21.03.2014, executed by the Corporate Debtor in favour of ITCL acting as the Security Agent of the Senior Banks.

v. Amendatory Security Trustee Agreement dated 09.04.2009 executed between the Corporate Debtor, the Original Subordinate Banks, and the ITCL.

w. Joint Deed of Hypothecation dated 02.07.2009 executed by the Corporate Debtor in favour of ITCL, acting as the Security Trustee for the Original Subordinate Banks

x. Amendatory Security Trustee Agreement dated 25.02.2014 executed the Corporate Debtor, the Original Subordinate Banks, and the IL&FS Trust.

y. Supplementary Inter-se Agreement dated 31.01.2014 executed between the Senior Banks, the Lead Bank, the Escrow Agent, the Security Agent, and the Corporate Debtor.

iii. A mere reading of the provision under Section 7 of the IBC shows that in order to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication regarding the occurrence of default before admitting the application.

iv. The Hon'ble NCLAT in the matter of Noil Christuraj v. SBI, 2024 SCC OnLine NCLAT 485 (Decided on April 18, 2024) held as under:

> *"55. It is relevantly pointed out that an 'Adjudicating Authority' / 'Tribunal' is having a limited / restricted role, to determine, whether the 'Application', is 'complete' and whether, there is 'any Debt' or 'Default' Adjudicating Authority / Tribunal:*
>
> *56. An `Adjudicating Authority' / `National Company Law Tribunal', in a `Proceeding', under Section 7 of the I & B Code, 2016, is not deciding a `Money Claim' or `Suit'. For triggering the `Insolvency Resolution Process', an `Adjudicating Authority' / `Tribunal', is not to decide the `Claim' of `Interest'.*
>
> *57. The `proceedings', under the I & B Code, 2016 are `summary in character'. In fact, the said proceedings, are not like `Civil Litigation', to be determined by a `Competent Court of Law'. Ofcourse, the `Corporate Debtor', is entitled to point out in a `CIRP' proceedings, before the `Adjudicating Authority' / `Tribunal', that the `Default', has not occurred. A `Debt', may not be due, if it is `not payable in Law' or `on facts'.*
>
> *58. In order to maintain an 'Application', under Section 7 of the I & B Code, 2016, the Petitioner, before the 'Adjudicating Authority' / 'Tribunal', must be able to establish the 'Existence of Debt', which is due, from a 'Corporate Debtor'.*

v. Further, the Hon'ble Supreme Court in the case of M. Suresh Kumar Reddy v. Canara Bank, (2023) 8 SCC 387 has held that once NCLT is

satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7.

vi. The Financial Creditor has placed on record Balance Confirmation Letter dated 04.11.2024 written by the West Haryana Highways Projects Private Limited to National Asset Reconstruction Company Ltd. confirming the principle outstanding amount of Rs.385, 90, 52,099/- (Rupees Three Hundred Eighty Five Crores Ninety Lacks Fifty Two Thousand Ninety Nine Only) plus interest as per loan agreement. This document **explicitly acknowledges a principal outstanding liability of Rs. 385,90,52,099/-** (Rupees Three Hundred Eighty-Five Crores Ninety Lakhs Fifty-Two Thousand Ninety-Nine Only), alongside accrued interest calculated in accordance with the underlying Loan Agreements.

vii. Further on perusal of the Balance Sheet of the Corporate Debtor for the year 2024-2025 it is apparent that the Corporate Debtor in its Balance Sheets has also acknowledged its liability towards National Asset Reconstruction Company Ltd. The Corporate Debtor has not been able to demonstrate any lawful discharge of his financial liability. Therefore, the existence of Debt and Default has been established and the requirements under Section 7 of the Code are satisfied.

viii. For what has been discussed hereinabove, the present Application filed under Section 7 of the code stands allowed.

60. In light of the above facts and circumstances, it is ordered as follows:

i. The Application bearing **IB-485/2025** filed by the Applicants under Section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **admitted.**

ii. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) and (d) of the Code. Thus, the following prohibitions are imposed:

(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 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;

(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.

[Explanation -For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, concession, clearances or a similar grant or right during the moratorium period;]"

iii. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.

iv. The Applicants have proposed the name of Mr. Ashish Arjunkumar Rathi as the Interim Resolution Professional ("IRP") having address: Office No. B- 508, Mahaavir Icon, Plot No 89, Sector 15, CBD Belapur, Navi Mumbai, Maharashtra, 400614. His Email id is ipashishrathi@gmail.com. His registration number is IBBI/IPA-001/IP-P00568/2017-18/11010. The Applicants filed a copy of the Consent Issued by Mr. Ashish Arjunkumar Rathi in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Ashish Arjunkumar Rathi is appointed as IRP. From the records it is apparent that the Authorization for Assignment placed

on record (Form B) is valid from 26.11.2024 to 31.12.2025. Therefore Mr. Ashish Arjunkumar Rathi is directed to place on record a valid Authorization for Assignment within a period of Three weeks.

v. In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

vi. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.

vii. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

viii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

ix. The Financial Creditors shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditors. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditors.

x. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditors, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.

xi. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

xii. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

xiii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

(RAVINDRA CHATURVEDI)

MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)

MEMBER (JUDICIAL)