IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

IA-995/2026
IN
IB-485 (ND)/2025

IN THE MATTER OF IB-485 (ND)/2023:

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

AND IN THE MATTER OF I.A. -995(ND)/2026:

ERA INFRA ENGINEERING LIMITED

.... Applicant

Versus

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED

(Acting In Its Capacity As A Trustee Of Narcl Trust - 0019),
Through Its Power Of Attorney Holder,
India Debt Resolution Company Limited)

.... Respondent

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. Arijit Prasad Sr. Adv., Mr. Anirban Bhattacharya, Mr. Rajeev Chaudhary, Ms. Priya Singh, Advs
For the Respondent :	Mr. Abhishek Anand, Ms. Smriti Churiwal, Mr. Jaiveer Kant, Ms. Vidisha Jain, Ms. Mehar, Ms. Palak Kalra, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed by M/s. Era Infra Engineering Limited under Section 65 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking the following prayers :

"a. Allow the present Application;

b. Pass necessary Order/ direction to allow the present Application under Section 65 of the Code for fraudulently seeking initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor and impose the penalty as provided under the section 65 of the Code;

c. During the pendency of the present Application grant ex-parte ad-interim stay on the proceedings in Company Petition (IB) No. 485 (ND) OF 2025 filed by the Respondent.

d. Pass any such order as may be deemed fit and proper in the facts and circumstances of the case."

2. The Applicant has filed the present Petition under section 65 of the Code on the following grounds:

A. Petition under Section 7 is barred by Section 65 as it has been initiated with intent, solely to abuse the Insolvency Process.

i. The Respondent was fully aware that the very same debt forming the subject matter of the present Petition under Section 7 had already been submitted, admitted, and addressed during the CIRP of the Applicant/EIEL and that such claims stood governed by a duly approved Resolution Plan and subsequent contractual arrangements executed in furtherance thereof.

ii. Despite knowledge, and having stepping in the shoes of the Assignor Bank post the Assignor Banks having voted for the resolution of the Applicant/EIEL, the Respondent has proceeded to initiate a separate CIRP against the Corporate Debtor, thereby attempting to circumvent the binding effect of the Resolution Plan. undermine its implementation, and subject the Corporate Debtor to multiple insolvency proceedings in respect of the same financial exposure.

B. Claims raised by the Respondent already stands dealt with in CIRP of the Applicant/EIEL.

i. Respondent while filing the present Petition under Section 7 of the Code against the Corporate Debtor, has failed to disclose that the very same claims forming the basis of the present proceedings were earlier filed, admitted and dealt with during the CIRP of the Applicant/EIEL. The claims arising from the Project of the Corporate Debtor were expressly included in the Form C submissions before the Resolution Professional of the Applicant, and the Assignor Banks of the Respondent actively participated in the CIRP, approved the Resolution Plan and accepted the treatment accorded to such claims thereunder.

ii. Once a claim is submitted and admitted in a CIRP, it becomes part of the collective insolvency resolution framework and loses its individual character. The creditor thereafter cannot assert a parallel or independent cause of action in respect of the same debt, particularly by initiating a fresh insolvency proceeding against an entity whose liabilities have already been subsumed and addressed in the parent CIRP.

iii. The Resolution Plan of the Applicant/EIEL provides that the Unsecured Financial Creditors (which includes the Respondent 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 creditors of the Applicant. That the Respondent, after the assignment of debt in its favor has merely stepped into the shoes of such. Assignors, and has also executed the definitive documents pursuant to approval of the resolution plan of the Applicant and thus, it cannot go beyond the decisions which were taken by the Assignee Banks.

C. Identical issue has already been adjudicated and concluded in prior proceedings

i. The issue which arises for consideration in the present proceedings is no longer res integra, inasmuch as an identical question had previously arisen before this Adjudicating Authority in C.P. (IB) No. 1767 of 2018 instituted under Section 7 of the Code by Dena Bank against the Corporate Debtor. In the said matter, this Adjudicating Authority, after examining the factual and legal position, categorically held that where a claim arising from a particular debt and default has already been lodged and admitted in an existing ClRP, a subsequent insolvency petition founded on the same cause of action would not be maintainable. The earlier proceedings were accordingly dismissed vide Order dated 09.08.2019.

ii. The principle laid down in the aforesaid adjudication squarely governs the controversy involved in the present case, as the issue for determination is materially identical

and rests upon the same legal foundation. Once the competent forum has already interpreted and settled the position with respect to maintainability in such circumstances, the same issue cannot be reopened or reconsidered in parallel proceedings.

D. Any outstanding debt has eclipsed through equity allotment

i. Pursuant to the approval of the Resolution Plan of the Applicant/EIEL vide Order dated 11.06.2024 passed by this Adjudicating Authority, the Respondent has already been paid as per the terms of the said Resolution Plan thereby settling the debt owed by the Corporate Debtor to the Respondent. The Resolution Plan of the Applicant/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.

ii. 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 Respondent for the entire balance debt of the Corporate Debtor, thereby evidencing implementation of a

corporate restructuring step involving issuance and allotment of equity securities.

iii. Said transaction is a subsequent event which demonstrates that steps were undertaken to give effect to a financial or settlement arrangement through allotment of equity instruments, thereby altering the character and treatment of the earlier acknowledged liability. Such post-acknowledgment action is relevant for determining the present status, enforceability, and subsistence of the alleged debt, as it indicates that the financial position between the parties was subjected to a structured adjustment mechanism rather than remaining an unchanged outstanding liability.

iv. Bank records independently corroborate that payments were also effected toward the liability. The Statement of Account dated 17.11.2025 issued by Union Bank of India in respect of the account of the Applicant reflects RTGS transactions dated 29.10.2024 showing deposits of Rs. 24,53,093.63 and Rs. 13,86,013.23 to the Respondent as, thereby evidencing transfer of the upfront payment towards the discharge of the debt as per the terms of the approved resolution plan of the Applicant.

E. Corporate Debtor lacks independent commercial existence and operated as an alter ego of the Applicant/EIEL

i. Corporate Debtor was created as an SPV as per the terms of contracts awarded to the Applicant/EIEL and its core objective was to comply with the tender requirements and not engage in any activity outside of those aligned with objective of the Applicant/EIEL. The creation of the Corporate Debtor as an SPV or as separate legal entity was structured and operated in a manner that made them an extension of the Applicant/EIEL. Moreover, the Corporate Debtor's decision making financial management and contractual obligation was deeply connected to the Applicant.

ii. Corporate Debtor being an SPV, was utilised by the SRA through the Resolution Plan as a means to resolve its outstanding dues which affirms that the financial outcomes of the Applicant/EIEL was an integral part of the Corporate Debtor's obligations. It is submitted that the corporate veil may be lifted where a subsidiary is found to be the alter-ego or mere extension of the parent company.

F. Respondent has elected to pursue and derive benefits under the CIRP and Resolution Plan of the Applicant

i. The Assignor Banks who were predecessors of the Respondent, with full knowledge of the facts and the legal consequences, consciously elected to pursue their remedies under the ClRP of the Applicant by filing their claims in Form C, participating in the Committee of

Creditors, voting in favour of the Resolution Plan, and thereafter accepting and deriving benefits from the arbitral proceeds distributed under the approved Resolution Plan and the SAP Agreement.

ii. The Assignor Banks who were predecessors of the Respondent have unequivocally elected such remedy and acted upon it to their advantage, the Respondent is barred by the Doctrine of election from subsequently invoking an inconsistent and parallel remedy by initiating a separate insolvency proceeding under Section 7 of the Code against the Corporate Debtor in respect of the very same debt and cause of action.

G. Respondent are bound by the terms of the Resolution Plan and sharing of Arbitral Proceeds Agreement.

i. Applicant/EIEL through the Corporate Debtor (as the SPV) was the claimant in various arbitration proceedings against NHAI for recovery of losses arising from delays attributable to NHAI in the execution of the project. The Resolution Plan specifically earmarked the arbitral proceeds from these arbitrations for the benefit of the creditors of the Applicant/EIEL, and the same was duly contemplated and approved therein.

ii. Assignors of the debt to Respondent were active participants in the 29th CoC meeting, wherein the

Resolution Plan was duly approved. Notably, the Assignor Banks themselves voted in favor of the Resolution Plan submitted by the SRA signifying their express consent to its terms. The Respondent being an assignee of the lender banks, assumes the rights and obligations of the original lenders within the insolvency resolution process.

3. Analysis and Findings

i. We have heard the Ld. Counsel appearing on behalf of the Applicant as well as the Respondent. We have also perused the records. The Applicant herein i.e. M/s. Era Infra Engineering Limited has filed the present application under Section 65 of the Insolvency and Bankruptcy Code, 2016 on the ground of malicious and fraudulent initiation of Corporate Insolvency Resolution Process against M/s. West Haryana Highways Project Private Limited by National Asset Reconstruction Company Limited.

ii. Before adverting to the facts of the case and issues involved therein, it is pertinent to refer to the relevant provisions under which the present application has been filed. Section 65 of the Code reads as under:-

*"**65.** (1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon

such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

[(3) If any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.]"

iii. The essential ingredients to establish a case under Section 65 are:-

(i) An application must have been initiated for a Corporate Insolvency Resolution Process or liquidation proceeding fraudulently and with malicious intent.

(ii) For a purpose other than for the resolution of the insolvency or liquidation, as the case may be.

iv. Thus, we are required to examine the facts of the present case in the touchstone of the ingredients of Section 65 of the Code.

v. In a nutshell, the case of the Applicant is that a Memorandum of Understanding dated 23.02.2007 (MoU 2007) was executed between M/s. Era Construction India Limited (now M/s. Era Infra Engineering Limited) (49%)- the Applicant herein and M/s. Karam Chand Thapar & Bros. (51%) when National Highway Authority of India (NHAI) for the development of Delhi-Haryana Border to the Rohtak Highway Project on a Build, Operate and Transfer (BOT) basis through a Request for Proposal ("RFP").

vi. It is submitted that the REP and MoU contemplated incorporation of a Special Purpose Vehicle (SPV) for the implementation of the project. Accordingly, West Haryana Highways Project Private Limited (WHHPPL) was incorporated solely as a project-specific SPV to execute the NHAI Project. It is submitted that the WHHPPL was incorporated solely for implementation of the NHAI project and has no independent commercial undertaking capable of being revived as a going concern, much less through CIRP.

vii. It is also submitted that the Applicant/M/s. Era Infra Engineering Limited was admitted to CIRP in a petition filed under Section 7 of the Code vide order dated 08.05.2019 and subsequently, the resolution plan was was submitted by M/s. S.A. Infrastructure Consultants Pvt. Ltd., which plan came to be approved by this Adjudicating Authority on 11.06.2024. The WHHPPL being a SPV has no independent assets or business capable of sustaining a separate insolvency resolution. In the said resolution plan, the Financial Creditors of the Applicant herein (EIEL) treated the receivables of WHHPPL as the receivables of EIEL and decided to share with the proceeds of the Arbitral Award for the recovery of the claims.

viii. The Resolution Plan with respect to EIEL having been approved by this Adjudicating Authority vide order dated 11.06.2024, has attained finality under Section 31(1) of the Code and the said plan is binding up all stakeholders including NARCL which is the assignee of the lenders, who have approved the Plan.

ix. It is further submitted that the Respondent herein NARCL, is merely the assignee of the very same consortium of lenders which participated in, voted in favour of, and became bound by the approved Resolution Plan of Era Infra Engineering Limited. Thus, as per the settled principle of law that an assignee cannot acquire rights superior to those of it assignor and is bound by the obligations and consequences attaching to the assigned debt. Therefore, the Respondent cannot now seek to initiate a parallel CIRP against WHHPPL after the lenders had consciously elected to resolve their exposure through the CIRP of EIEL and accepted the treatment accorded under the approved Resolution Plan.

x. It is submitted that pursuant to the approval of the resolution plan of EIEL, the Respondent entered into the SAP Agreement dated 05.09.2024 which specifically provides the manner in which the debt relating to WHHPPL was to be treated. The debt assigned to NARCL in respect of WHHPPL stands specifically recognized, and the Respondent who is assignee of the lenders who approved the Plan, agreed to receive consideration by way of an upfront payment, equity shares, and 10% of the gross proceeds received from the arbitral awards exceeding Rs. 3,000 Crores, in terms of Clause 2.2.2 of the SAP Agreement.

xi. It is therefore submitted that the Respondent cannot now seek to invoke a separate CIRP against the WHHPPL, in respect of the same exposure.

xii. Thus, the WHHPPL including its only asset being the Arbitral Proceeds having been already resolved under the approved Resolution Plan, there

remains no asset for resolution of WHHPPL. On the above premise, the Applicant herein seeks to invoke Section 65 of the Code.

xiii. Ld. Counsel appearing on behalf of the Respondent on the contrary refuted the submissions raised by the Ld. Counsel appearing on behalf of the Applicant.

xiv. It is submitted that the present Section 7 petition i.e. (CP (IB) No. 485/2025) is founded on an assigned, secured financial debt of the Corporate Debtor as principal borrower, a subsisting NPA classification, registered charges, and a Balance Confirmation dated 04.11.2024 by which the Corporate Debtor itself acknowledged the debt after the SAP Agreement and after approval of EIEL's Resolution Plan. Therefore, the intention of the CIRP cannot be termed as fraudulent or malicious. Further, the debt is acknowledged in the Balance Sheet of the Corporate Debtor for the Financial Year ending on 31.03.2025.

xv. It is further submitted that the entire case of the Applicant is based on extinguishment of debt which does not amount to a fraudulent act.

xvi. It is further submitted that the claim admitted in the Applicant's CIRP was unsecured arising from Applicant's corporate guarantee. The debt now claimed against the Corporate Debtor is secured, arising from independent Term Loan Agreements executed by it as principal borrower, backed by registered charges over its own assets. Satisfaction of an unsecured claim against EIEL cannot discharge a separate secured claim against the Corporate Debtor. The two debts remain distinct, and one cannot be equated with or substituted for the other.

xvii. The Applicant's contention that no CIRP/resolution is possible against the Corporate Debtor because it is "only an SPV" with no independent assets is misconceived and has no basis under the Code. The Corporate Debtor is not assetless it holds its own Concession Agreement with NHAI, its own toll/receivables from the Project, and its own claims in arbitration against NHAI for delay-related losses all of which are assets of the Corporate Debtor in its own right, not of the Applicant.

xviii. The Applicant has also sought to place reliance on Clause 8.4 (S. No. 10 @ Pg. 210 of I.A. No. 995 of 2026/Vol. II) to submit that the subsidiaries were included in the CIRP of the Applicant. However, the said submission is frivolous and baseless as it is settled law that the holding company continues to retain its rights with respect to its shareholding in the subsidiary company. The right available under the Resolution Plan to take over management control was not a special right created by virtue of the Resolution Plan. It is apposite to note that during CIRP under Section 28 of the Code, the Resolution Professional can also make changes in the management of the subsidiaries of the Corporate Debtor. Therefore, it is evident that the power to change management in a subsidiary flow from the shareholding controlled by the holding company in the subsidiary. Hence, the said clause was not a special clause and that the said power would have existed with the SRA even in the absence of the said Clause.

xix. The case of the Applicant is that under the resolution plan of EIEL the debts of the present Corporate Debtor has been resolved. In this regard, we may note that the source of obligation in the debt of EIEL was

corporate guarantee which falls as an unsecured debt. However, in the case of Corporate Debtor, it is an independent Term Loan Agreements executed by the Corporate Debtor as principal borrower. Moreover, in the Term Loan I, II, III, Secured, charge on fixed assets, hypothecation of equipment, book debts, immovable properties etc. are dealt. In the case of the present Corporate Debtor, there is no release of the Corporate Debtor's own security as evident from Clause 6 of the resolution plan. Clauses 13.2.4 to 13.2.7 under the heading 'Treatment of Assenting Financial Creditors' are limited to the Applicant and do not refer to the SPVs or the rights of financial creditors in relation to the SPVs. Clause 14 of the Resolution Plan which deals with the extinguishment and waiver of claims and liabilities also does not deal with the claims of the financial creditors against the SPVs / subsidiaries. Hence, the Resolution Plan do not cover the subsidiaries / SPVs of the Applicant and do not provide for extinguishment of the rights of the unsecured financial creditors against such SPVs/subsidiaries.

xx. Further, an Affidavit dated 28.11.2022 has been filed by SRA in the CIRP of EIEL which reserves the right of the unsecured Financial Creditors to retain all their rights for realization of their Debts from the Principal Debtor/any other Guarantor as per the terms of the loan agreements.

xxi. We may further note that in the case of a similar SPV i.e., Haridwar Highways Project Ltd. & Ors. Hon'ble NCLAT in its order dated

12.03.2026 in Company Appeal (AT) (Insolvency) No. 1693, 1694, 1695 of 2025 has observed as under:

"20. ***We thus are of the view that the debt of lenders towards principal borrower and the corporate guarantor shall not be eclipsed by approval of the resolution plan of the appellant be order dated 11.06.2024 passed by the adjudicating authority. Relevant clauses of the resolution plan and clarification affidavit given by the SRA we have already noticed which clearly indicate that the debt of unsecured financial creditor with respect to HHPL was not to be extinguished with and financial creditors were fully entitled to proceed.*** *In the clarification affidavit (Annexure – 2) we had extracted the following statement "that unsecured financial creditor will continue to retain all their rights for realisation of their debts from the principal debtor/any other guarantor as per the terms of Loan Agreement".* ***The above clarification clearly dispels all doubts regarding entitlement of the financial creditor to proceed against the principal borrower and guarantor despite of the approval of the resolution plan in the CIRP of EIEL."***

The above referred order passed by Hon'ble NCLAT has been upheld by the Hon'ble Supreme Court in Civil Appeal No. 6699/2026 vide order dated 04.05.2026.

xxii. In response to the contentions raised by the Applicant with regard to the SAP Agreement, it is seen from the records that the

secured/unsecured classification under the SAP Agreement refers to how Assenting Financial Creditor's claim was admitted in EIEL's CIRP not to any security. Schedule 1 to the SAP Agreement lists "NARCL (Assignment of WHHPPL Debt) 13.86%" under the Assenting Unsecured Financial Creditors, not under the Secured Creditors list. This confirms that whatever right the Respondent has under the SAP Agreement is confined to its position as an unsecured creditor of EIEL (arising from the Corporate Guarantee/shortfall undertaking) and has nothing to do with the Corporate Debtor's own secured Term Loan debt as principal borrower which is the subject matter of CP (IB) No. 485/2025 and lies entirely outside the SAP Agreement.

xxiii. Ld. Counsel appearing for the Respondent further submitted that all the objections raised by the Applicant herein with respect to the Section 7 application have already been adjudicated in the case of another SPV i.e. Haridwar Highways Project Ltd. In this regard, he referred to the judgment of this Adjudicating Authority dated 04.11.2025 passed in CP (IB) No. 777 of 2024 and judgment dated 12.03.2026 passed in Company Appeal (AT) (Ins.) No. 1695 and 1697 of 2025 passed by the Hon'ble NCLAT and the Order dated 04.05.2026 passed by the Hon'ble Supreme Court in Civil Appeal No. 6699 of 2026 and submitted that all the issues raised by the Applicant have been decided and reached finality.

xxiv. Section 65 of the Insolvency and Bankruptcy Code, 2016 ("the Code") addresses the wrongful initiation of insolvency proceedings undertaken with fraudulent or malicious intent. Its primary objective is to curb the

abuse of the insolvency mechanism by debtors or creditors who seek to obtain an undue benefit by improperly triggering the process.

xxv. The Hon'ble NCLAT in its judgement, in the case of Amour Infrastructure LLP vs. Digital Integrated Technologies Pvt. Ltd, CA (AT) (Ins) No. 884 of 2022, wherein it has been held that for proving the ingredients of Section 65 of IBC, the same has to be backed by adequate pleadings and findings.

xxvi. The Hon'ble NCLAT in its judgement, in the case of Acute Daily Media Pvt. Ltd. and Ors. v. Rockman Advertising and Marketing (India) Ltd. and Ors., CA (AT) (Ins) No. 1480 of 2024 has observed that:

> *"32. While returning our findings on the tenability of the impugned order, we must at the very outset add that that to* ***prove any transaction to be collusive and fraudulent in nature, the degree of proof and evidence required should be beyond reasonable doubt*** *and we propose to apply the same standard of proof to the facts of the present case."*

xxvii. **One of the essentials required under Section 65 of the Code is** initiation of CIRP/liquidation "fraudulently" or with "malicious intent" for a purpose other than resolution of insolvency. In the instant Application, CP (IB) -485/2025 filed under Section 7 of the Code is based on a financial debt of the Corporate Debtor as principal borrower under Term Loan Agreements and subsequent classification of the Account as NPA. The Financial Creditor has placed on record 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. 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. Unless the Corporate Debtor can adduce any satisfactory evidence showing that the Financial Creditor initiated the process either "fraudulently" or with "malicious intent", the petition is presumed to be a bona fide exercise of legal rights. Therefore the Applicant has not been able to demonstrate any element of initiation of CIRP/liquidation "fraudulently" or with "malicious intent".

xxviii. Grounds and averments raised by the Applicant in the present Application are not sufficient to explicitly establish, with the requisite degree of certainty the elements of 'malice' or 'fraudulent intent', on part of the Corporate Debtor. The standard of proof and evidence which is required is beyond reasonable doubt has not been satisfied. In view of the above observations, the present Application I.A.-995/2026 stands dismissed accordingly.

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)