NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 187 of 2023 & I.A. No. 677, 678, 679 of 2023

(Arising out of the Order dated 09.02.2023 passed by the National Company Law Tribunal, Mumbai Bench, in Company Petition (IB) No. 973/MB/2020)

IN THE MATTER OF:

Uday J. Desai
Aged 66 years, S/o Late Sh. Jayant M Desai R/o S-279, 2nd Floor, Panchsheel Park, Malviya Nagar, New Delhi- 110017

…Appellant

Versus

1. Bank of India
(Acting through its Authorised Officer) Branch Office at:
Kasturba Marg Branch, 26/41. Thapar House, Birhana Road, Kanpur - 208001
Head Office at:
Star House, C5, G-Block, Bandra Kurla Complex Bandra (East), Mumbai – 400051

…Respondent No. 1

2. Frost International Limited Through the Interim Resolution Professional (IRP)
Registered Office at:
709, C Wing, One BKC, Near Indian Oil Petrol Pump, Bandra Kurla Complex, Bandra East
Mumbai -40005

…Respondent No. 2

Present

For Appellants: Mr. Malak Bhatt, Ms. Neeha Nagpal, Ms. Samridhi, Mr. Shreyansh Chopra, Advocates.

For Respondents: Mr. Prakash Shinde, Ms. Ruchita Jain, Advocates for R-1. Mr. Varun Kalra, Advocate for R-2/RP.

J U D G E M E N T

(27.02.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., Uday J. Desai, who is the ex-director of Frost International Ltd. **("Corporate Debtor")**, under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('**Code**') against the Order dated 09.02.2023 ("Impugned Order") passed by the National Company Law Tribunal, Mumbai Bench **("Adjudicating Authority")** in Company Petition (IB) No. 973/MB/2020.

Bank of India, who is the Financial Creditor of the Corporate Debtor, is the Respondent No.1 herein.

Frost International Ltd., who is the Corporate Debtor, is Respondent No. 2, herein, represented by Mr. Amit Chandrakant Shah, Resolution Professional of the Corporate Debtor.

2. The Appellant submitted that Corporate Debtor is a company incorporated in the year 1995 and has been engaged in the business of trading commodities for more than two decades. Its primary activity is Merchanting Trade. It is a government-certified 3-star rated Export and Trading House dealing in a wide range of commodities including agricultural products, electronic and computer items, minerals and metals. The Appellant further submitted that the Merchanting Trade operations of the Corporate Debtor were regularly scrutinised and audited by the consortium of 14 banks – Bank of India, Punjab National Bank, Allahabad

Bank, Indian Overseas Bank, Bank of Baroda, UCO Bank, Central Bank of India, United Bank of India, Oriental Bank of Commerce, Canara Bank, BOB (erstwhile Vijaya Bank), Syndicate Bank, Andhra Bank and Union Bank of India – as well as by the Reserve Bank of India. The Appellant stated that all audits found the operations to be completely in order.

3. The Appellant submitted that the Financial Creditor, Bank of India (the Respondent No. 1) had extended various credit facilities of Rs. 756.75 Crores to the Corporate Debtor under sanction letters dated 25.08.2015, 07.12.2016 and 05.09.2017.

4. The Appellant submitted that on 08.02.2018, a consortium meeting was held in which all lender banks, including the Respondent No. 1, expressly confirmed that the Corporate Debtor's account was in the standard category with no overdues and no issues of concern at their end.

5. The Appellant submitted that on 12.02.2018, the Reserve Bank of India (RBI) issued Circular No. RBI/2017-18/131 prescribing a revised framework for resolution of stressed assets. In view of the said circular, certain other proceedings against a group company and an anonymous complaint, the consortium of banks, including the Financial Creditor, abruptly froze all credit lines without prior intimation or justification. The banks also adjusted advances received from foreign buyers against their outstanding dues. It is the case of the Appellant that these actions of the Banks, completely stopped the business of the Corporate Debtor whereas even at that stage, the Corporate Debtor remained committed to

repay the banks and submitted several resolution plans. The Appellant tried to impress upon that out of the total Letter of Credit (LC) devolvement of Rs. 5,988 crores, substantial amounts have already been repaid by the Corporate Debtor.

6. The Appellant submitted that the Corporate Debtor's account continued to be treated as standard and regular by all banks till as late as April 2018. On 17.03.2018, another Bank's consortium meeting was held. Despite the RBI circular of 12.02.2018 having come into force and proceedings against another group having commenced, all banks again confirmed that the accounts OF THE Corporate Debtor were standard and regular. The Appellant submitted the Deputy General Manager of the lead bank (Bank of India/ Financial Creditor/Respondent No. 1) specifically advised all member banks in the said meetings to actively associate with the Corporate Debtor so that day-to-day business is not affected and no overnight stipulations are imposed to strangle the account of the Corporate Debtor.

7. The Appellant submitted that between mid-March and early April 2018, the banks suddenly stopped extending fresh LCs, which were essential for the continuous trade cycle by the Corporate Debtor. The Appellant conceded that this was the first time the accounts went into stress. The Appellant stated that on 03.04.2018, a high-level meeting of top management of all lender banks was held, where it was resolved that normal operations would be allowed up to sanctioned limits and that a forensic audit would be conducted from FY 2012-13 onwards.

The Appellant alleged that the decision of the Banks to allow normal operations of the Corporate Debtor was never implemented by the Banks.

8. The Appellant submitted that on 30.06.2018, the Respondent No. 1 declared the account of the Corporate Debtor as NPA. The Appellant pleaded that the Corporate Debtor, as directed by the banks, submitted a resolution plan on 09.07.2018, providing clear timelines of the irregularities to be cleared by December 2018 and overall exposure to be reduced thereafter. The Appellant submitted that on 17.07.2018, the consortium rejected the plan on frivolous grounds and called for a revised plan, and in the same meeting, the banks themselves noted that they had adjusted payments received during the stressed period, contrary to the April 2018 high-level decision and had not allowed operation or opening of fresh LCs, thereby frustrating the business of the Corporate Debtor.

9. The Appellant submitted that the Corporate Debtor submitted a revised resolution plan on 06.08.2018, which was rejected by the Bank arbitrarily without any reasons on merit. On 30.08.2018 the banks asked for a settlement proposal and on 07.09.2018, the Corporate Debtor offered a One Time Settlement (OTS) which was not accepted by Bank and no reasons were ever given to the Corporate Debtor.

10. The Appellant submitted that on 10.09.2018, the Respondent No. 1 filed the first Section 7 petition being CP No. 3608 of 2018. Between September and November 2018, the Corporate Debtor supplied numerous documents and

information to Haribhakti & Co. for the forensic audit. On 27.12.2018 the consortium meeting noted that Haribhakti & Co., forensic auditors, had failed to consider the documents and directed preparation of an addendum after verifying all papers and working out cash flows for alleged diversion. The Appellant stated that on 05.01.2019, Haribhakti & Co. submitted the Forensic Audit Report, without carrying out fund trailing, verification of book debts or considering any material supplied by the Corporate Debtor. The Appellant argued that on the basis of this flawed forensic audit report, the banks declared the account of the Corporate Debtor as "fraud".

11. The Appellant submitted that on 02.04.2019, the Hon'ble Supreme Court of India, in ***Dharani Sugars and Chemicals Ltd. v. Union of India, (2019) 5 SCC 480*** (in which the Corporate Debtor was one of the petitioners) quashed the RBI Circular dated 12.02.2018, as ultra vires and held that all proceedings initiated on the basis of the said circular become non-est. The first Section 7 petition was accordingly dismissed by the Adjudicating Authority on 14.10.2019.

12. The Appellant submitted that on 07.06.2019, the RBI issued a fresh Stressed Assets Resolution Framework. The Appellant conceded that the Corporate Debtor, somehow, could not avail the benefit of this framework or the subsequent COVID Regulatory Package dated 23.05.2020 solely because of the illegal "fraud" declaration by the Banks.

13. The Appellant submitted that despite dismissal of the first section 7 application, the Financial Creditor filed the second Section 7 petition being

CP(IB) No. 973/MB/2020 claiming default of Rs. 872,58,08,402/-. The Corporate Debtor filed IA No. 2001/2022 under Section 60(5) of the Code raising preliminary objections of maintainability, res judicata and violation of RBI guidelines dated 07.06.2019, default caused by banks' arbitrary conduct, violation of fair play and that actions under the quashed 2018 circular were void, however the Adjudicating Authority rejected the submission of the Appellant in the Impugned Order.

14. The Corporate Debtor held 20% participating interest in Oil Block in the Cambay Basin under the Product Sharing Contract with the Government of India. Commercial production was expected to commence in FY 2022-23 and was to generate substantial cash flows sufficient to clear all dues. The Appellant pleaded that initiation of CIRP results in automatic termination of the Product Sharing Contract under Article 30.3, wiping out the value of this prime asset.

15. The Appellant submitted that the impugned order dated 09.02.2023, is a non-speaking order as it merely states that default above threshold is established and does not deal with any of the detailed contentions raised in the maintainability application, Reply, Additional Affidavit or written submissions.

16. The Appellant submitted that the second application under Section 7 of the Code by the Respondent No. 1 is barred by res judicata. The first petition CP No. 3608 of 2018 was filed on the same cause of action and for the identical debt and was dismissed by the Adjudicating Authority. No liberty was granted to file a fresh petition. The second petition does not even disclose the earlier dismissal.

17. The Appellant submitted that second application under Section 7 of the Code by the Respondent No. 1, was filed without proper authority as the document was an unsigned resolution and does not comply with the Ministry of Corporate Affairs Notification dated 01.03.2019. The Appellant further submitted that several documents relied upon by the Respondent No. 1 are unstamped or insufficiently stamped and therefore, are inadmissible.

18. The Appellant submitted that the second application under Section 7 of the Code by the Respondent No. 1 violates the RBI Framework dated 07.06.2019, as no opportunity was given to the Corporate Debtor to submit a resolution plan or to restructure under inter-creditor arrangement. The illegal "fraud" declaration has made the Corporate Debtor ineligible for restructuring under the said framework.

19. The Appellant submitted that the alleged default of Rs. 872,58,08,402/- was caused entirely by the arbitrary actions of the Financial Creditor as the banks froze limits, stopped LCs, adjusted foreign buyer advances and failed to implement their own resolutions despite the account of the Corporate Debtor being standard till April 2018. The Appellant pleaded that the Corporate Debtor acted with complete bona fides and made every possible effort to resolve the matter.

20. The Appellant submitted that the Corporate Debtor is solvent and viable and is facing only temporary hardship caused by the banks. The Code cannot be used to penalise a solvent company in temporary default, as held by the Hon'ble

Supreme Court of India in ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd., 2022 SCC OnLine SC 841***. It is the case of the Appellant that Admission of CIRP by the Adjudicating Authority and now it's continuation, would defeat the very object of the Code, which is to maximise asset value and revive the Corporate Debtor, not to liquidate a healthy entity.

21. Concluding its arguments, the Appellate requested this Appellate Tribunal to set aside the Impugned Order and allow this appeal and to restore its pre-CIRP status forthwith.

22. Per contra, the Respondent No. 1 and the Respondent No. 2, denied all averments made by the Appellants as misleading and baseless.

23. The Respondent No. 1 contended that the Corporate Debtor had availed credit facilities under sanction letters dated 25.08.2015, 09.03.2016, 07.12.2016 and 05.09.2017. The sanctioned facilities aggregated to Rs. 756.75 crores, comprising Cash Credit Rs. 0.75 crore, EPC/FBP Rs. 30.00 crores (total fund-based Rs. 30.75 crores), LC Rs. 700.00 crores, LOC for Buyers Credit Rs. 150.00 crores, ILC Rs. 30.00 crores, Bank Guarantee Rs. 50.00 crores and credit equivalent exposure Rs. 26.00 crores. The Corporate Debtor executed all loan and security documents including the Supplemental Working Capital Consortium Agreement dated 26.11.2015, undertakings, omnibus counter guarantees, omnibus indemnity, board resolution dated 26.11.2015, memoranda of entry creating mortgage and charge on pari passu basis dated 26.11.2015, 14.12.2015, 09.07.2016, 04.03.2017 and hypothecation of stocks dated 26.11.2015. Personal

guarantees were furnished by 13 individuals and corporate guarantees were given by R.S. Builders, Global Exim, NSD & SD Nirman.

24. The Respondent No. 1 submitted that the Corporate Debtor committed default on 12.04.2018 and the account of the Corporate Debtor was classified as NPA with effect from 30.06.2018. As on 01.05.2020, the admitted outstanding due and payable to the Respondent No. 1 stood at Rs. 872,58,08,402.27. The debt and default are duly recorded in the NeSL Information Utility Report and the CIBIL Report dated 11.11.2018, both of which are on record.

25. The Respondent No. 1 contended that the Corporate Debtor has repeatedly admitted the debt and occurrence of default. The Corporate Debtor acknowledged the liability vide letters dated 26.11.2015, 23.01.2017 and 23.03.2018. The debt is also reflected in the audited balance sheets of the Corporate Debtor. The Respondent No. 1 submitted that in its OTS proposal and in the Affidavit in Reply dated 11.07.2022, the Corporate Debtor has expressly admitted the debt and default.

26. The Respondent No. 1 submitted that the Appellant's contention that the account remained standard with no overdues is factually incorrect. The Respondent No. 1 explained that in the consortium meeting dated 17.03.2018, the Corporate Debtor admitted that payments had been getting delayed since mid-February 2018 due to prevailing scenarios in India and abroad. The Respondent No. 1 emphasized that the consortium meeting dated 17.07.2018 recorded the decision to initiate recovery steps including filing of application before

Adjudicating Authority in case the resolution plan was not implemented within the RBI timelines. The Respondent No. 1 stated that the resolution plan submitted on 09.07.2018 by the Corporate Debtor and the revised resolution plan submitted on 06.08.2018, which were rejected by the consortium of banks after due consideration.

27. The Respondent No. 1 contended that there is no violation of the RBI Prudential Framework dated 07.06.2019. The Corporate Debtor never submitted any resolution plan under the said Framework. The Corporate Debtor itself confirmed in its reply affidavit that pursuant to the forensic audit, the account of the Corporate Debtor was classified as 'fraud' on 05.01.2019. The Respondent No. 1 brought out that the writ petition challenging the forensic report was dismissed by the Hon'ble Delhi High Court on 26.07.2019. The Letters Patent Appeal No. 564 of 2019 is pending before the Hon'ble High Court of Delhi without any stay and pendency of the Letters Patent Appeal is irrelevant for the present proceedings.

28. The Respondent No. 1 submitted that the judgment in *Vidarbha Industries (Supra)* is not applicable to the facts of this case as the Corporate Debtor is not viable at all. The Corporate Debtor failed to take any steps to recover its own trade receivables and continued to carry on business in a manner detrimental to the interest of the Corporate Debtor and its stakeholders, thereby necessitating the initiation of CIRP.

29. The Respondent No. 1 contended that the documents relied upon are fully admissible. The issue of stamping cannot be raised in the summary proceedings under the Code. The Corporate Debtor itself has admitted the debt and default and has offered settlement proposals, which were rejected as not viable and on the lower side.

30. The Respondent No. 1 submitted that the CIRP is at an advanced stage. The Resolution Plan has already been approved by the requisite majority of the Committee of Creditors (CoC). Interlocutory Application No. 135 of 2025 is pending before the Adjudicating Authority for approval of the Resolution Plan. The Respondent No. 1 argued that the present appeal is a clear afterthought and amounts to abuse of the process of law with the sole intention to delay the time-bound CIRP and defeat the rights of all stakeholders.

31. The Respondent No. 1 contended that the Corporate Debtor has never disputed the existence of financial debt or the occurrence of default. The petition under Section 7 was complete in all respects and well within limitation. The Adjudicating Authority, after considering all pleadings and documents, rightly admitted the petition and commenced CIRP. The order dated 09.02.2023 is in accordance with the provisions of the Code and the law laid down by the Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407*.

32. Concluding his arguments, the Respondent No. 1 requested this Appellate Tribunal to dismiss the appeal with cost.

33. The Respondent No. 2 submitted that during pleading before us, pursuant to the e-voting conducted in relation to the 40th meeting of the CoC, which was concluded on November 3, 2025, the Resolution Plan submitted by one Greensward Enterprise Private Limited was approved by the CoC with 69.26% voting share, being well in excess of the statutory threshold prescribed under Section 30(4) of the Code and the said approval is duly recorded in the voting results dated November 3, 2023. The Respondent No.2 further submitted that in the same e-voting process concluded on November 3, 2025, the proposal submitted by the ex-promoter (suspended director), Mr. Sujay U. Desai, (son of Appellant, Mr. Uday J. Desai) under Section 12A of the IBC for withdrawal of CIRP ("Section 12A proposal"), was categorically rejected by the CoC with 100% votes cast against the said Section 12A proposal. Accordingly, the Section 12A proposal stood finally rejected by the commercial decision of the CoC.

34. The Respondent No.2 submitted that Section 12A proposal was discussed in detail by Mr. Sujay U. Desai in the 32nd CoC meeting held on February 13, 2025, and subsequently he had submitted an addendum for the same on May 14, 2025, to all the Lenders. The said Section 12A proposal was placed for e-voting simultaneously with the Resolution Plans during 40th meeting of the CoC held on June 3, 2025. Thus, the Appellant was given an equal opportunity, at par with other Prospective Resolution Applicants. This fact was also acknowledged by Mr. Sujay U. Desai in the 46th CoC meeting held on November 6, 2025. The Respondent No.2 clarified that the minutes of the 46th meeting of the CoC clearly

record and reaffirm that the Resolution Plan of Greensward Enterprise Private Limited stands approved by the CoC, while all other resolution plans as well as the Section 12A proposal submitted by the expromoter were not approved. The CoC further resolved to proceed with issuance of the Letter of Intent to the Successful Resolution Applicant and filing of the application before the Adjudicating Authority, Mumbai for approval of the Resolution Plan.

35. The Respondent No. 2 submitted that the Resolution Plan, having been found compliant with Section 30(2) of the Code, was duly placed before the CoC and has been approved by the CoC with the requisite majority in exercise of its commercial wisdom under Section 30(4) of the Code and pursuant to the approval of Resolution Plan by the CoC, the Respondent No. 2 has filed an Interlocutory Application, bearing I.A. No. 135 of 2025, before the Adjudicating Authority seeking approval of the said Resolution Plan, which is currently pending adjudication.

36. The Respondent No.2 submitted that once the resolution plan is approved by the CoC, the same attains binding force inter se all stakeholders, subject only to approval by the Adjudicating Authority under Section 31 of the Code. In any case the Resolution Professional is a neutral person conducting the CIRP and does not possess any adjudicatory or commercial powers. The Resolution Professional is statutorily bound to act in accordance with the decisions taken by the CoC and cannot independently entertain, reject, or act upon any proposal, including any

belated settlement or objection raised by the ex-promoters of the Corporate Debtor.

37. The Resolution Professional strongly refuted the allegations raised by the Appellants against the Resolution Professional as vague, bald, and unsubstantiated. The Respondent No. 2 also submitted that the ex-promoters like the Appellant have no vested or enforceable right to interfere with or stall the CIRP, particularly after approval of the Resolution Plan by the CoC. Upon commencement of CIRP, the management and control of the Corporate Debtor vests with the IRP/RP under Section 17 of the Code, and the role of the suspended management stands expressly curtailed. The Respondent No.2 also submitted that any attempt by the ex-promoters to stall CIRP after approval of the Resolution Plan by the CoC, is contrary to Section 12A of the Code read with Regulation 30A of the CIRP Regulations. The statutory scheme clearly envisages strict timelines and finality of process and does not permit reopening of the CIRP at the whims of the erstwhile promoters.

38. In this regard, Respondent No. 2 places reliance on the judgment of this Appellate Tribunal in Hem Singh Bharana v. Pawan Doot Estate (P) Ltd., 2023 SCC OnLine NCLAT 34, wherein it has been held that once a Resolution Plan has been approved by the CoC, no settlement proposal or application under Section 12A at the instance of an ex-promoter can be entertained, and that the resolution professional cannot be faulted for proceeding with the CIRP in accordance with the CoC's decision. This Appellant Tribunal further reiterated

that the commercial wisdom of the CoC is paramount and nonjusticiable, and that entertaining belated challenges by ex-promoters would defeat the very object of the Code, which mandates timely resolution and certainty in insolvency proceedings. The Respondent No.2 submitted that permitting such challenges at this stage would open floodgates for disgruntled promoters to endlessly litigate and delay resolution, thereby eroding creditor confidence and frustrating the value maximisation objective of the Code.

39. Concluding his arguments, the Respondent No. 2 requested this Appellate Tribunal to dismiss the appeal.

Findings

40. After recording all the rival contentions of all the parties, we shall now deal the issues raised by the Appellant in the present appeal before us.

41. We note that one Section 7 application was filed under Section 7 of the code by the Respondent No. 1/ Bank of India Limited, seeking to initiate CIRP against Frost International Limited ('the Corporate Debtor'). The present petition was filed on 25.03.2022 on the ground that a loan for a sum of Rs. 756.75/- Crore was advanced by the Financial Creditors i.e. along with interest of Rs.238,39,26,438.43/- are payable by the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same. The total amount claimed to be in default by the Financial Creditors is Rs.8,72,58,08,402.27/-. The date of default stated to be is 12.04.2018. We note that the Respondent No. 1 sanctioned various

financial facilities like Cash Credit, EPC/FBP, LC, LoC for Buyers Credit, ILC, Bank Guarantee, Credit Equivalent Exposure etc. Thus, the Corporate Debtor was liable to repay the amount of Rs. 606,17,29,608.48/- (principal) along with interest of Rs.238,39,26,438.43/- plus Penal interest of Rs.28,01,52,355.36/- as on 01.05.2020. We observe that the Respondent No. 1 vide legal notice dated 06.08.2018 had called upon the Corporate Debtor to pay the principal amount along with interest from 21.06.2018 and since the Corporate Debtor failed to repay the amount, the account of the corporate Debtor was decaled as NPA w.e.f. 30.06.2018.

42. It has been brought to our notice that the Corporate Debtor vide Revival Letter has acknowledged the liability to the Respondent No. 1. Further, vide letters of acknowledgement of debt dated 23.01.2017 & 23.03.2018 and in the audited Balance sheets respectively, the Corporate Debtor acknowledge debt towards the Respondent No. 1.

43. During pleadings, the Appellant strongly pleaded that the Corporate Debtor was a viable entity and even at this stage, is viable entity which is required to be allowed to continue. The Appellant referred to the ratio of the judgement of the Hon'ble Supreme Court of India delivered in the case of Vidarbha (Supra) where Vidarbha was allowed to continue rejecting the admission of the CIRP on the ground that Vidarbha was a viable entity.

The Appellant tried to impress upon us that based on the receivable and other assets including resources available to the Corporate Debtor, the Corporate

Debtor can easily overcome for financial distress and make suitable payments to the lenders including Respondent No. 1.

44. In this regard, we note that Vidarbha stood on its own facts. We note that the Supreme Court in Vidarbha Industries Power Ltd. v. Axis Bank Ltd. (2022) held that under Section 7 of the Code, the Adjudicating Authority (NCLT) is not bound to mandatorily admit a corporate insolvency resolution process (CIRP) application upon mere proof of default, but has discretion to examine surrounding facts and circumstances before admission. In this case, Axis Bank Ltd. had filed a Section 7 application against Vidarbha Industries Power Ltd. for financial default; however, Vidarbha contended that a substantial sum had been awarded in its favour by the Appellate Tribunal for Electricity, which, if realized, would enable it to clear the dues. The Supreme Court interpreted the word "may" in Section 7(5)(a) as conferring discretionary power on the NCLT, unlike the mandatory language used in Section 9 for operational creditors, and held that the financial health and overall circumstances of the corporate debtor can be considered before admitting insolvency proceedings. Accordingly, the Court set aside the NCLAT's order and remanded the matter, emphasizing that insolvency should not be triggered mechanically when viable grounds exist to justify non-admission.

45. In this connection, we asked the Appellant to substantiate the arguments as to how the ratio of *Vidarbha (Supra)* is applicable w.r.t. the financial position of the Corporate Debtor. The Appellant submitted that the Corporate Debtor had

huge turnover between 2010-2018 of approximately 92, 000 Crores and paid taxes of Rs. 360 Crores. The Appellant submitted that as on 31.08.2018, the Corporate Debtor had trade receivables of Rs. 4,288 crores against total bank debts of approximately Rs. 4,041 crores. The net worth of the Corporate Debtor was positive and the realizable value of assets far exceeds liabilities. On this point, we note that in any case, these are past historical events and do not reflect the viability of the Corporate Debtor at the stage of initiation of CIRP or even at this stage of the present appeal.

46. We again put a pointed query to the Appellant to refer to the financial facts which establish that the Corporate Debtor has assets or net worth of more than outstanding dues payable by the Corporate Debtor to creditors especially Respondent No. 1 of Rs. 872 Crores in order to fall itself in the ambit of Vidarbha ratio. No specific averments or factual financial position could be brought out by the Appellant to our notice, which could have confirmed the fact that the Corporate Debtor indeed had required funds/ receivable which are unconditional/unencumbered or imminent receivables, which could sail through the Corporate Debtor out of financial mess and could pay outstanding dues of financial creditors including Respondent No. 1. Thus, we do not find merit in the arguments of the Appellant that as per the ratio of ***Vidarbha (Supra),*** the Adjudicating Authority ought to have rejected the Section 7 application filed by the Respondent No. 1.

To reiterate based on the pleadings before us, records made available and non-submission of any concrete financial evidence by the Appellant to sustain facts showing the financial strength and net worth of the Corporate Debtor, we find no logical and legal grounds to interfere in the Impugned Order on this issue. Thus, we hold that the alleged viability of the Corporate Debtor, as argued by the Appellant is not established and therefore, the arguments of the Appellant on the ground of viability based on ***Vidarbha (Supra)*** is found meritless and stand rejected.

47. The Appellant also brought to our notice that it is due the conduct of the Respondent No. 1, which led to the insolvency of the Corporate Debtor. The Appellant referred to few meetings of Banks whereby the other consortium bankers were willing to bail out the Corporate Debtor but the Respondent No. 1 stalled the same. The Appellant highlighted the minutes of the consortium meeting held on 17.07.2018, in which the various banks representative were present along with Appellant and in the same meeting IOB advised that they had sanctioned FLC limit of Rs. 1500 Crores and the present devolvement amount was Rs. 439 Crores. The Appellant also referred to Para 12 of the said meeting dated 17.07.2018 where the UCO Bank raised issues that some banks has adjusted amount received during the stress period and not allowed to open fresh LC's of the Corporate Debtor. The Appellant tried to develop this as case where other banks were willing to support the Corporate Debtor to revive the Corporate

Debtor whereas the Respondent No. 1 along with the few selected banks were bent upon to take the Corporate Debtor into CIRP and later into liquidation.

48. In this background, we take into consideration the relevant portion of the minutes of the consortium meeting of banks dated 17.07.2018 which reads as under: -

MINUTES OF THE CONSORTIUM MEETING
Name of the Company: M/s Frost International Ltd.
Purpose of Meeting: As per Agenda attached
Date / Time:17.07.2018/12.30 PM
Venue: Hotel Ramada, Lucknow

Bankers Present:

Names	Designation/ Organization	Contact numbers
Mr. Khursheed Anwar	DGM, BOI, NBG, Lucknow	7043453185
Mr. R. Algarsamy	DGM, BOI, NBG, Lucknow	9443674440
Mr. Prashant Kumar Singh	Zonal Manager, BOI, Kanpur	9838202081
Mr. Rajeev Lal	AGM, BOI, NBG, Lucknow	9599698323
Mr. A.R. Satpute	AGM, BOI, Kanpur	8600434590
Mr. K.B.Shrivas	Chief Manager, BOI, Kanpur	9454792876
Mr. ShankarnandJha	AGM, IOB, Kanpur	9810575492
Mr Sanjay Kumar Mandal	AGM, Union Bank of India	8779047275
Ms. ShaliniMenon	AGM, Union Bank of India	9820109395
Mr Selvaraj S.	AGM, Bank of Baroda	7045616944
Mr. Mithilesh Kumar	AGM, Bank of Baroda	022-66985641
Mr. S.K.Das	CM, Bank of Baroda	
Mr. Rajesh Mehra	AGM, Central Bank of India	7985833247
Mr. Sanjeet Kumar	CM, Canara Bank	9987554499
Mr. S.K.Garg	AGM, Punjab National Bank	8130694737
Mr. Bobby Tanwar	AGM, Oriental Bank of Commerce	9599919122
Mr. UmakantPadhi	CM, Vijaya Bank	7842268238
Mr. Kapil Bishnoi	CM, UCO Bank	8437029206
Mr. A.K.Kaul	AGM, Allahabad Bank, Kanpur	9996258774
Mr. Nandan K.R.	SM, Allahabad Bank	
Mr.Oshiher Choudhary	SM, Allahabad Bank	9006392263
Mr. Gajender P Gupta	CM, United Bank of India	9811795508
Mr. Neeraj Verma	DGM, United Bank of India	9831034369
Mr. K. Rama Mohan	DGM, Andhra Bank	9867228951
Mr. S.D.Negi	AGM, Syndicate Bank	9969002723
Mr. G. Phani Kumar	AGM, Syndicate Bank	9869442138
Mr. R.K.Mathur	DGM, Indian Overseas Bank	9839010168
Mr S.N. Jha	AGM, Indian Overseas Bank	9810575492
Mr. Samir Tiwari	SM, Indian Overseas Bank	9450365872

Company:

Names	Designation	Contact numbers
Mr. Uday Desai	CMD, FIL	9811031428
Mr Sujay U Desai	Director FIL	9819331428
Mr Sunil Verma	Director FIL	9839035216
Mr Atul Rastogi	CFO FIL	9838070319
Mr. Nagendra Shukla	FIL	-
Mr. Brajesh Mishra	GM FIL	7235807224

1) The Meeting was presided over by Mr.Khursheed Anwar, DGM, Bank of India(Lead Bank).Various bank functionaries including DGMs / AGMs / Chief Managers / Sr. Managers / Managers participated in the meeting. The Company was represented by Mr. Uday Desai (CMD), Mr. Sujay. U. Desai (Director & CEO).Mr. Atul Rastogi (CFO) and other company functionaries.

2) Mr. Uday Desai welcomed all the participants .

3) Mr. A.R. Satpute, AGM-Bank of India welcomed all participating members and read the Agenda.

4) **Minutes of previous meeting of 22.06.2018:** Mr. A.R. Satpute briefly outlined the agenda points to be deliberated upon in the course of the meeting. Starting with the Agenda item at S. No. 1 of meeting, he stated that the Minutes of the previous Consortium Meeting of 22.06.2018 had been circulated .Minutes were unanimously confirmed by all the member banks.

5) **Review of provisional financials of the Company for FY 2017-18:** Mr. Atul Rastogi (CFO- FIL) informed that as Forensic Audit of all group companies are undergoing, the Company officials were busy in providing documents, information, data to the forensic auditors and hence provisional balance sheet as on 31.03.2018 could not be finalized. He assured to submit the provisional balance sheet by 25.07.2018. He also informed that top line for 2017-18 was approximately Rs. 13000 cr and bottom line is yet not arrived.

6) **Sharing of Credit Information by Member Banks and noting of the status of the accounts at member Bank**: Lead Bank urged member banks to share the latest updated position in respect of account in the format provided by lead bank. It has been advised that there are LC devolvement with all member Banks. Bank of India, Allahabad Bank, Indian Overseas Bank, Oriental Bank of Commerce, UCO Bank, Union Bank of India and Vijay Bank has classified the account as NPA as on 30.06.2018.

7) **Status of Devolvement of LCs, regularization of devolvement of LC, Resolution Plan:** Lead Bank advised that Company has submitted resolution plan vide their letter dated 09.07.2018 and same was shared with member banks. Detail deliberation was undertaken on the resolution plan submitted by the Company. The members banks come to the conclusion that:

i. The resolution plan is not prepared as per RBI guidelines.

ii. Specified time is not mentioned.

iii. Company has to bring 20% of devolvement amount upfront.

iv. The Company has stated in resolution plan that as some banks has not open the LCs/not allowed them to utilize unutilized LCs resulted in disruption of trade cycle and hence LCs started devolving. This views was opposed/objected by the member Banks.

Company advised that they were not well worse with the RBI guidelines and proposed that revised resolution plan will be submitted by it by 31.07.2018, however consortium member banks insisted for submission of Resolution Plan by 25.07.2018.

Member banks asked the company to submit detail list of debtors with address, contact no .and email ID immediately.

Member bank also asked the company why the company has not yet initiated any legal action against the debtors for realization of their goods. Mr. Uday Desai advised that they are following with the buyers and even offering discount. He also explained that once the legal action starts, realizations/restart of business would be difficult but in the event of non –realization, company will start initiation of legal action against buyers. Consortium members asked Company to submit correspondent with buyers for recovery of export proceeds.

Member banks decided to explore the possibilities of initiating recovery/legal action against the buyers/debtors and advised the company to provide POA to the banks for initiating recovery/legal action against buyers.

Member banks also decided to appoint two credit rating agencies after receipt of revised resolution plan.

Mr. Satpute advised the consortium that total gross devolvement of LC is Rs. 3169.00 crs and net devolvement after adjusting margin and recovery is Rs. 2662 00 crs. The list is attached for bank wise devolvement position.

IOB advised that they had sanctioned FLC limit of Rs. 1500.00 crs outside the consortium and present net devolvement amount is Rs. 439.10 crs.

The Consortium has also decided following action points for recovery of over dues if resolution plan is not implemented in time limit as per RBI guidelines:

1. Issue of Recall Notices by individual banks.
2. Invocation of personal/corporate guarantee by filing suit in DRT for consortium limits.
3. To file application in NCLT for consortium limits.
4. Appointment of Detective Agency for identification of personal properties of promotes/guarantors which are not mortgaged with consortium.

The position of Devolvement of LC in Group Companies:

Company Name	IOB		OBC		UBI		Total	
	Limit/ Margin	Devolvement Amt	Limit/ Margin	Devolvement Amt	Limit/ Margin	Devolvement Amt	Limit	Devolvement Amt
Frost Infrastructure & Energy Ltd.	860 (87.50 %)	141.23	225.00 (90 & 80%)	20.00	100 (35%)	4.43	1185.00	165.66
Globiz Exim Pvt Ltd	128 (87.50 %)	10.27	150 (90%)	7.00	-	-	278.00	17.27
Olympic Oil Industries Ltd	235 (87.50)	7.76	250 (85%)	38.80	-	-	485.00	46.56
Viva Merchant Pvt. Ltd.	-	10.14		3.50	-	-		13.64
Total		169.40		69.30		4.43		243.13

8) **Progress of forensic Audit**:

Lead Bank advised that Forensic Audit is in advance stage and expect that interim report to be received by July end. The company has been requested to submit the pending data, information, documents immediately to the forensic auditors for finalization of forensic audit report.

9) **Investment in Mohan Steel Pvt. Ltd.:** The Company advised that they are filing application in NCLT against the Mohan Steel Pvt. Ltd. within a week. Lead bank advised that Company has submitted their letter dated 25.06.2018 (received on 30 06 2018) in response to the letter issued by lead bank to the company . The company's reply was shared to the member banks. IOB advised that the Directors of FILs were authorized signatory in the account of Mohan Steels Pvt. Ltd. and were handing all operations of the Mohan Steel Pvt. Ltd. Member banks asked IOB to submit their reply to the letter issued by the lead bank on behalf of the consortium on 15.06.2018. IOB advised that they will submit their reply with documents within a week. It was decided to discuss the matter in next consortium meeting after receipt of reply from IOB.

10) **Stock inspection and mortgaged property Inspections:**
Lead Bank advised that Inspections are carried out as under:
Stock at Megalaya – Bank of India and Canara Bank – 07.07.2018
Stock at Kandhala – Union Bank of India and Syndicate Bank on 09.07.2018
Lead Bank requested banks to submit report for sharing with member banks

It has also been decided that mortgaged property inspections to be carried out within a week as under:
Delhi – Allahabad bank and United Bank of India
Kanpur- Indian Overseas Bank and Allahabad Bank
Kolkata Property – United Bank of India

11) **Collateral Security** – TDR: Lead Bank advised that they have shared list of TDRs held with various bank as collateral security on pari passu basis for consortium. Lead bank requested members to remit the proceeds of this TDR to lead bank (Bank of India) for sharing the same with member banks.
The amount wise collateral security in form of FDR with various member banks is as under:

Bank	FDR Amount
Bank of India	Rs. 800.22 lacs
UCO Bank	Rs. 702.44 lacs
Punjab National Bank	Rs. 1065.83 lacs
Central Bank of India	Rs. 332.00 lacs
Bank of Baroda	Rs. 789.52 lacs
United Bank of India	Rs. 514.23 lacs
Indian Overseas Bank	Rs. 987.01 lacs
Andhra Bank	Rs. 414.17 lacs
Total	Rs. 5605.42 lacs

11:

12) UCO Bank raised issue that some banks has adjusted the amount received during stressed period and not allowed to open fresh LCs and reduced their exposure contradicting the decision taken in high level meeting dated 03.04.2018 attended by the MD&CEO/ED of the consortium member Banks. They demanded that this recovery to be proportionately shared with member banks. Consortium decided to discuss this issue in next consortium meeting.

There being no other issue being pressed by any member, the meeting concluded with a vote of thanks by Mr. Uday Desai.

49. From above, we note that Para 12, in fact, was adjustment issue of the proceeds from the Corporate Debtor, inter-se among the banks as lenders, rather than any alleged support to the Corporate Debtor.

We further note from para 7 of the said minute that the Resolution Plan submitted by the Corporate Debtor dated 09.07.2018 was indeed discussed in this high-level meeting but was not found worth considering, since the Resolution Plan of the Corporate Debtor was not prepared as per RBI Guidelines and further no specified time was mentioned and the company was to bring 20% of devolvement amount upfront, which the Corporate Debtor could not do.

We also note that the banks noted that the gross devolvement of LC amount was Rs. 3169 Crores and therefore, the bank decided to issue recall notice to the Corporate Debtor by individual banks, invocation of personal, corporate guarantee by filing suit in DRT, file application in NCLT for insolvency of the Corporate Debtor and also appoint detective agency for identification of personal properties of promoters/ guarantors which are not mortgaged with the consortium.

Thus, the issues raised by the Appellant regarding misconduct by the Respondent No. 1, whereas other banks allegedly tried to help the Corporate Debtor, is not found correct based on the above facts.

50. At this stage, we will also examine the issue raised by the Appellant regarding of violation of RBI Circular dated 07.06.2019. The relevant para 9 reads as under: -

> *"9. All lenders must put in place Board-approved policies for resolution of stressed assets, including the timelines for resolution. Since default with any lender is a lagging indicator of financial stress faced by the borrower, it is expected that the lenders initiate the process of implementing a resolution plan (RP) even before a default. In any case, once a borrower is reported to be in default by any of the lenders mentioned at 3(a), 3(b) and 3(c), lenders shall undertake a prima facie review of the borrower account within thirty days from such default ("Review Period"). During this Review Period of thirty days, lenders may decide on the resolution strategy, including the nature of the RP, the approach for implementation of the RP, etc.* ***The lenders may also choose to initiate legal proceedings for insolvency or recovery****."*
>
> *(Emphasis Supplied)*

From above, we note that RBI specified as how the banks to consider the Resolution Plan, which depends upon the nature of the Resolution Plan, approach for implementation of Resolution Plan, resolution strategy etc. However, it is important to note that the same was not exactly mandatory for the bank and the RBI gave flexibility to the lenders to initiate legal proceedings for insolvency or recovery against the Corporate Debtor.

Thus, we are of the view that it is a commercial decision of the banks like the Respondent No. 1 and no one else including the Adjudicating Authority or even this Appellant Tribunal, can look into the reason for acceptance or rejections of the Resolution Plan by the lender's banks in terms of RBI Circular dated 07.06.2019.

51. We find that debt and default was crystallised and remain undisputed. The Appellant has also not denied the debt and default, therefore, the Adjudicating Authority was required to admit the same in terms of the schemes of the Code as well as judicial pronouncement by the Hon'ble Supreme Court of India especially in view of ***Innoventive (Supra)***.

52. As regard, the plea of the Appellant regarding res judicata since, first application filed by the Respondent No. 1 was rejected by the Adjudicating Authority, we note that the first Section 7 application filed by the Respondent No. 1 was rejected by the Adjudicating Authority since the RBI Circular dated 12.02.2018 was declared as *ultra-vires* in the case of ***Dharani Sugar (Supra)*** and not on merit of the case.

53. We note that the present CIRP was requested by the Respondent No. 1, based on revised Circular of RBI dated 07.06.2019, which has not been interfered by any judicial authority till date and therefore, the Respondent No. 1 has rightly filed the CIRP application on 25.03.2022 and has been correctly admitted by the Adjudicating Authority through the Impugned Order on 09.02.2023. Thus, we

do not find the principle of res judicate applicable in the present case and reject the pleading of the Appellant on this issue.

54. We note that Appellant has challenged the Impugned Order, primarily on grounds that the Corporate Debtor's account was in standard category and there were no over dues, and relied on the minutes of the Consortium Meeting dated 08.02.2018, 17.03. 2018. It is also the case of the Appellant that the Respondent has violated the RBI Prudential Framework for Resolution of Stressed Assets dated 07.06.2019 by not providing an opportunity to the Corporate Debtor to submit Resolution Plan.

55. As regards issue raised by the Appellant that The Hon'ble Division Bench of the Delhi High Court vide order dated 26.07.2019, had dismissed the Writ Petition challenging the Haribhakti & Co. LLP forensic report for fraud. We note that the said Order was challenged in Letter patent appeal, before Hon'ble Delhi High Court, however, there was no stay. Pursuant to Fraud declaration, CBI also filed FIR on 19.01.2020. The union of India had taken cognizance of the fraudulent transactions of the Corporate Debtor, and through Serious Fraud Investigation Office and filed Company Petition No.410 of 2021, under relevant provisions of the Companies Act, 2013. Further, the investigation is going on. We are conscious of the fact that the Corporate Debtor had not given any Resolution Plan in 2019. Thus, the argument of the Appellant that declaration of Fraud, has been set aside, may not be relevant at this juncture.

56. On this issue that the Corporate Debtor's Account was in standard category till February 2018, we have recorded that the Corporate Debtor had breached the terms and conditions of sanction letter, loan, security documents and had committed default. We also note that the date of default is 12.04.2018 and the account of the Corporate Debtor was classified as NPA w.e.f. 30.06.2018.

57. We observe that the Corporate Debtor has never disputed or denied the debt and defaults and thus the Order dated 09.02.2023, is as per the Code and the initiation of CIRP against the Corporate Debtor was rightly commenced. The Respondent No.1 and No.2 brought to our notice that the CIRP process of the Corporate Debtor is at advanced stage the Resolution Plan for the Corporate Debtor has been approved by requisite majority vote of CoC and the Interlocutory Application No.135 of 2025, is pending for Resolution Plan approval from the Adjudicating Authority. We do not find any reason to interfere in this process at this stage.

58. We note that the Corporate Debtor has pleaded that the present CIRP is in violation of the RBI circular dated 07.06.2019 as no opportunity was given to the Corporate Debtor to submit a resolution plan or restructure its debt under an inter creditor arrangement. The Corporate Debtor submits that the Corporate Debtor on 09.07.2018, had submitted a resolution plan which was rejected by the Respondent No. 1 arbitrary grounds. Further the Corporate Debtor had submitted a revised resolution plan which was also rejected by the Respondent No. 1 without any consideration. The Corporate Debtor once again proposed OTS on

07.09.2018 which was also not rejected by the Respondent No. 1. The Appellant contended that the Respondent No. 1 has violated the principles of fair play and equity by prejudicing the Corporate Debtor's case and denying it an opportunity to present a revival plan under the RBI circular dated 07.06.2019. On this issue raised by the Appellant, we observe that the Corporate Debtor had not submitted any Resolution Plan under RBI circular dated 07.06.2019. We also note that the Corporate Debtor in Affidavit in Reply has confirmed that pursuant to the appointment of the forensic auditor by the Bank, the account of the Corporate Debtor had been classified as 'fraud'. We wonder if the Corporate Debtor has not even submitted the Resolution Plan in terms of extant RBI guidelines of 07.06.2019, how the Appellant can at this stage accuse the Respondent No. 1 for not considering the same. Therefore, we do not find merit in arguments of the Appellant on this issue.

59. We note that the application made by the Respondent No. 1 before the Adjudicating Authority was complete in all respects and it clearly showed that the Corporate Debtor was in default of a debt due and payable, and the default was in excess of minimum amount stipulated under section 4 (1) of the Code. Therefore, the debt and default stands established and there was no reason for the Adjudicating Authority to deny the admission of the Petition.

60. We also take into consideration the latest judgement of the Hon'ble Supreme Court of India, delivered, as recently on 18.02.2026, in the case of ***Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan (Interim***

Resolution Professional of Hiranmaye Energy Ltd.), 2026 SCC OnLine SC 248. We find same as applicable in present appeal, which confirm that the Adjudicating Authority should admit section 7 appeal, once debt and default is established. The relevant portion of the judgment reads as under:-

> ***"17.*** *It is further contended that the Corporate Debtor is a running and viable power project which cannot be treated as insolvent. The Corporate Debtor has a subsisting PPA for 25 years with WBSEDCL and has raised bills of about Rs. 906 crores between 01.11.2024 to 31.03.2025. It has a continuing fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI Scheme, and had earned an EBIDTA of Rs. 20 crore per month during the CIRP. In this factual matrix, relying on Vidarbha Industries Power Ltd. v. Axis Bank Ltd, it is contended that the Section 7 application ought not to have been admitted.*
>
> *.....*
>
> ***21.*** *The Respondents also submit that the Appellant's emphasis on the Corporate Debtor's alleged viability is legally misplaced at the admission stage under Section 7, IBC. They contend that the Adjudicating Authority's role at that stage is limited to examining whether a financial debt exists and whether a default has occurred, and once those requirements are met, the Adjudicating Authority has scarcely any discretion to refuse admission. Proceedings under Section 7 cannot be expanded into a broad inquiry on business viability, equities, or surrounding circumstances. Reliance is placed on Innoventive Industries Ltd. v. ICICI Bank and M. Suresh Kumar Reddy v. Canara Bank*
>
> *.....*

23. *Analysing the submissions of the parties, it appears the Appellant has assailed the admission of Section 7 application on the following issues:*

i. Whether date of default fell between 25.03.2020 to 24.03.2021, and was thereby barred under Section 10A, IBC?

ii. Whether common loan agreement had been novated by 1st restructuring agreement dated 21.02.2020, which was followed by the 2nd restructuring agreement dated 29.09.2020, envisaging the repayment of debt in monthly instalments till 31.12.2042 and there was no existing debt due and payable by the Corporate Debtor at the time of admission of the Section 7 application?

*iii****. Whether the Adjudicating Authority ought not to have admitted the Section 7 application mechanically without assessing the viability of the Corporate Debtor as an ongoing concern and its ability to repay the debts, in view of Vidarbha (supra)?***

….

34. *In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under Section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary*

intervention is "to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation."

***35**. The Appellant has heavily relied on Vidarbha (supra) to argue that the Adjudicating Authority has ample discretion to apply its mind to relevant factors including the feasibility of initiation of insolvency process notwithstanding the existence of default on a debt due and payable by the Corporate Debtor. In Vidarbha (supra), this Court observed: —*

> *"61. In our view, the Appellate Authority (NCLAT) erred in holding that the adjudicating authority (NCLT) was only required to see whether there had been a debt and the corporate debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for initiation of CIRP. The adjudicating authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of Aptel referred to above and the overall financial health and viability of the corporate debtor under its existing management.*
>
> *……*
>
> *90. We are clearly of the view that the adjudicating authority (NCLT) as also the Appellate Tribunal*

(NCLAT) fell in error in holding that once it was found that a debt existed and a corporate debtor was in default in payment of the debt there would be no option to the adjudicating authority (NCLT) but to admit the petition under Section 7 IBC."

36. *However, in review, this Court clarified that observations made in Paragraph 90 are restricted to the facts of Vidarbha (supra): —*

"6. The elucidation in para 90 and other paragraphs [of the judgment under review] were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."

37. *Finally, the apparent dichotomy between Innoventive (supra) and Vidarbha (supra) was set at rest in M. Suresh Kumar Reddy (supra), wherein this Court observed: —*

"14. Thus, it was clarified by the order in review that the decision in Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in Innoventive Industries and E.S. Krishnamurthy. The view taken in Innoventive Industries still holds good."

(emphasis supplied)

38. *In light of the ratio in M. Suresh Kumar Reddy (supra) there is no cavil that the ratio in Innoventive (supra) lays down the correct*

proposition of law and the observations in Vidarbha (supra) were made in the facts of the case and do not operate as binding precedent.

39. *Even otherwise on facts, Vidarbha (supra) does not come to the aid of the Appellant. In Vidarbha (supra), this Court had taken note of an award passed by APTEL in favour of the corporate debtor which far exceeded the claim of the financial creditor, and held in the setting of such facts, initiation of CIRP was unwarranted. In the present case, Appellant's contention regarding Corporate Debtor's viability is highly dubious. Though the Corporate Debtor strenuously demonstrates its commercial viability, the NCLAT has noted that the extent of outstanding liability as on 02.01.2024 was Rs. 3103.31 crore, which far exceeds the bills raised on WBSEDCL to the tune of Rs. 906 crore and EBITDA of Rs. 20 crore per month during the CIRP.*

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

(Emphasis Supplied)

61. We are bound by the above clear judgements, which is fully applicable in the facts of the present case. This leaves no scope for any interference by us, in the Impugned Order.

62. In view of our detailed discussion above, we do not find any merit whatsoever in the pleadings of the Appellant on any of the issues brought before us as discussed in the preceding pages. The appeal sans merit and stand dismissed. I.A., if any, are closed. No order as to cost.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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