



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

IA (IB) No. 613/KB/2025

In

Company Petition (IB) No. 273/KB/2024

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

Aditya Birla Finance Limited

... Financial Creditor/ Applicant.

Versus

Saket Infra Developers Pvt Ltd

... Corporate Debtor/ Respondent.

IA (IB) No. 613/KB/2025

IN THE MATTER OF:

An Application under section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016.

IN THE MATTER OF:

Aditya Birla Finance Limited

... Financial Creditor.

Versus

Saket Infra Developers Pvt Ltd

... Corporate Debtor.

In the matter of:

Saket Infra Developers Pvt Ltd

...Applicant

Versus

Aditya Birla Finance Limited

...Respondent

Date of Pronouncement: 17.02.2026

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Coram:

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)
CMDE. SIDDHARTH MISHRA, MEMBER (TECHNICAL)**

Appearance:

For the Financial Creditor

Mr. Shaunak Mitra, Adv.

Mr. Amit Kr. Nag, Adv.

Ms. Ranjabati Ray, Adv.

Mr. Saptarshi Kar, Adv.

ORDER

PER Bidisha Banerjee, Member (Judicial):

1. The Court congregated through hybrid mode.
2. Heard the Learned Counsels for both the parties.

3. *Factual matrix:*

The instant company petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, for brevity I&B Code, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by “**Aditya Birla Finance Limited**”, hereinafter referred to as “**Financial Creditor**”/ “**Applicant**” against “**Saket Infra Developers Pvt Ltd**”, hereinafter referred to as “**Corporate Debtor**”/ “**Respondent**” seeking direction to initiate Corporate Insolvency Resolution Process (for brevity “CIRP”) in respect of the Corporate Debtor due to a default in repayment of a financial debt amounting to Rs.8,18,00,000/-.

4. *Submissions of the Ld. Counsel for the Applicant:*

4.1 It is submitted that the Financial Creditor has disbursed an aggregate sum of Rs. 8,18,00,000/- under multiple sanction letters and loan agreements between 2016 and 2021, including

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restructured and fresh facilities, which constitute “financial debt” within the meaning of Section 5(8) of the Code.

- 4.2** It is claimed that the Corporate Debtor has committed default in repayment of the said financial debt and the loan account has rightly been classified as NPA on 13 November 2023 after the dues remained unpaid for more than 90 days. It is pointed out that as on 28 November 2023, an amount of Rs. 7,88,20,657.67/- is due and payable and the default is continuing.
- 4.3** It is further submitted that the reliance of the Corporate Debtor on 15 March 2021 and 04 January 2021 as alleged dates of default is misconceived. Those dates pertain either to the pre-restructuring facilities or to the interest-capitalisation account created in December 2020 during the COVID moratorium. The Corporate Debtor itself requested restructuring, and after the restructuring under sanction letter dated 06 July 2021 and agreement dated 14 July 2021, the relevant cause of action is the subsequent default culminating in NPA on 13 November 2023. Therefore, Section 10A is not attracted.
- 4.4** That it is further submitted that Section 10A was introduced as a temporary protective measure to bar filing of CIRP applications for defaults arising during the COVID-19 suspension window between 25 March 2020 and 25 March 2021. It does not grant permanent immunity nor does its bar initiation of CIRP for defaults which occur after expiry of the suspension period or for continuing defaults that extend beyond such period. The present default, being of 2023, falls clearly outside the Section 10A window.

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- 4.5** It is submitted that the Corporate Debtor's attempt to rely on an old NeSL Record of Default showing 15 March 2021 is selective and misleading, as the Section 7 petition is based on the post-restructuring facilities and the continuing default reflected in the statements of account for 2023.
- 4.6** It is claimed that there is no concealment or suppression by the Financial Creditor. All sanction letters, restructuring documents, loan agreements, statements of account and NeSL records have been placed on record. The petition has been filed in good faith and strictly in accordance with law, meeting all requirements of Section 7 read with the applicable rules.
- 4.7** It is further submitted that the proceedings under SARFAESI Act, under Section 9 of the Arbitration and Conciliation Act, and under IBC are distinct statutory remedies and are neither mutually exclusive nor barred by the doctrine of election. Each statute has a different object; IBC is a resolution mechanism and not a mere recovery tool. The law is well settled that parallel remedies can be pursued, and there is no bar on a financial creditor initiating CIRP merely because it has also invoked SARFAESI or arbitration.
- 4.8** That it is submitted that Section 34 of the SARFAESI Act, which bars civil court jurisdiction, does not apply to proceedings before this Tribunal under IBC. The overriding effect of Section 238 of the Code has been recognised in several decisions, and the pendency of SARFAESI or arbitration proceedings cannot render

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the Section 7 petition non-maintainable. Section 238 gives an overriding effect to the IBC over all other laws.

4.9 It is submitted that the Corporate Debtor is also not entitled to raise any defence based on MSME status at this stage. No MSME registration or certificate was ever disclosed or furnished to the Financial Creditor at the time of initial sanction in 2016, during restructuring in 2021, or prior to the account being declared NPA on 13 November 2023. In any event, MSME-related guidelines do not bar the filing of a Section 7 petition by a financial creditor.

4.10 It is claimed that the Corporate Debtor has not raised any genuine dispute as to the quantum of debt or occurrence of default; rather, it seeks to delay the proceedings by raising hyper-technical pleas on limitation, Section 10A and alleged forum shopping. The petition satisfies the triple test of “financial debt”, “default” and “threshold” and, therefore, deserves to be admitted.

5. *Submissions of the Ld. Counsel for the Respondent:*

5.1 It is claimed that the present Section 7 petition is not maintainable as no financial debt is due or payable. The Corporate Debtor contends that the loan account was wrongfully declared NPA and that the debt is disputed.

5.2 It is submitted that the Applicant is indulging in forum shopping by simultaneously pursuing proceedings under SARFAESI Act, Arbitration Act, and IBC for the same cause of action, which is impermissible and contrary to the spirit of the Code.

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- 5.3** It is claimed that the petition is barred by **Section 10A**, as according to the NeSL Record of Default filed by the Applicant itself, the date of default is **15 March 2021**, i.e., within the COVID-19 exclusion window (25.03.2020 to 25.03.2021). The statement of accounts filed at pages 380, 395, and 451 (Vol. 3) also reflect default dates of 04.01.2021.
- 5.4** It is further submitted that the Respondent is an MSME unit and is entitled to protection under the 29.05.2015 MSME Framework for Revival and Rehabilitation. The account could not have been declared NPA without following SMA identification norms. Reliance is placed on the Supreme Court judgment in **Pro Knits v. Canara Bank (SLP 7898/2024)**, allegedly holding the restructuring framework as mandatory.
- 5.5** It is claimed that *the* Applicant has filed false affidavits and suppressed material documents, including NOCs and pending proceedings under Section 9 before the Delhi High Court. It is argued that the Applicant approached the Tribunal with unclean hands.
- 5.6** It is submitted that the computation of dues is false and inflated. The Respondent alleges that it has repaid Rs. 3.72 crores through regular payments and Rs. 1.67 crores through sale proceeds of secured assets. It is further claimed that only Rs. 70 lakhs was disbursed under the Rs. 1.20 crore LOC, and Rs. 1 crore LOC was never disbursed at all.
- 5.7** *It is claimed that* the Applicant is misusing IBC as a recovery tool and the petition is a coercive measure rather than a bona fide attempt to resolve insolvency.

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5.8 It is further submitted *that* the petition suffers from incurable defects, including non-filing of banker's certificate, improper Part-III disclosures by the proposed IRP, absence of proper evidence of default, and violation of IBBI regulations.

6. Rejoinder

6.1 It is submitted that the reply affidavit of the Corporate Debtor is not maintainable as the right to file reply was closed by order dated 02 April 2025. The reply filed on 17 April 2025 is without leave and liable to be ignored.

6.2 It is further submitted *that* the Corporate Debtor's entire defence is an afterthought. Until issuance of Section 13(2) SARFAESI notice and filing of Section 7 petition, the Corporate Debtor never disputed the debt, default, or restructuring.

6.3 It is submitted that the default dates cited by the Corporate Debtor reflect pre-restructuring dues and cannot trigger Section 10A. The operative default is the non-payment under the 2021 restructured facilities, culminating in **NPA on 13 November 2023**. Section 10A does not bar continuing defaults or post-2021 defaults.

6.4 It is further submitted that the Corporate Debtor's claim of MSME protection is baseless, as no MSME certificate was furnished during sanction or restructuring. The 29.05.2015 FRR Framework does not override IBC or prevent classification as NPA.

6.5 It is submitted that the allegations of suppression, false affidavits, and misrepresentation are unfounded. All documents have been filed with transparency. The Respondent has not produced any evidence to rebut the statements of account or NPA classification.

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6.6 It is further submitted that partial repayments, adjustments of sale proceeds, or internal calculations do not extinguish the financial debt. The outstanding amount of **Rs. 7.88 crores** remains undisputed on record.

7. Analysis and Findings

- 7.1** We have heard the learned counsel for the parties and perused the pleadings, documents on record, statements of account, NeSL record and relevant statutory provisions with due care.
- 7.2** The existence of a **financial debt of Rs. 8.18 crores** disbursed under multiple sanctioned facilities is undisputed. The Corporate Debtor has not denied receipt of the funds or the restructuring carried out in July 2021.
- 7.3** The loan account was classified as **NPA on 13 November 2023** after the restructured instalments remained overdue for more than 90 days as per RBI norms. The outstanding of **Rs. 7.88 crores** as on 28 November 2023 is supported by banker's statements and has not been disproved by the Corporate Debtor.
- 7.4** As regards applicability Section 10A bar, the Adjudicating Authority finds that the dates relied upon by the Corporate Debtor (04.01.2021 and 15.03.2021) pertain to events prior to the restructuring of July 2021. The operative default pleaded by the Applicant is **post-restructuring that** culminated in NPA in November 2023. In the case of ***Pradeep Madhukar More v. Central Bank of India, Reported in (2023) ibclaw.in 629***, at para 25 therein having noted that "Application under Section 7 of the Code filed by the Central Bank of

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India was not for any default committed during 10A period, rather the Application was filed for default committed on 31.03.2022 under the One Time Restructuring Agreement dated 21.05.2021 and the event of default under One Time Restructuring Agreement happened only on 31.03.2022, giving right to the Financial Creditor to take recourse of Section 7 Application”, Hon’ble NCLAT held. *“We are, thus, of the view that no error has been committed by the Adjudicating Authority, admitting Section 7 Application”.*

(Emphasis added)

- 7.5** Section 10A does **not** apply to defaults occurring after 25.03.2021 or to continuing defaults. The debt and default relied upon for this petition fall *outside* the COVID exclusion window. Before we proceed to examine the contentions of the parties it is relevant to go through the provision of section 10 A of the IBC, 2016. Which is as follows: **“Section 10A: Suspension of initiation of Corporate Insolvency Resolution Process:** *“Notwithstanding anything contained in Sections 7, 9 and 10 no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf; Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period. Explanation: For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March 2020.”* The period specified in Section 10A of the Code was subsequently extended by Government Notification up to 24.03.2021 vide Notification number S.O 4638 (E) dated 22nd December, 2020. Therefore, in accordance with this Section, no proceedings under Section 7, 9 and 10

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of the IBC can be initiated against the Corporate Debtor for the default which has occurred between the period from 25.03.2020 till 24.03.2021.

7.6 The plea of MSME protection is also unsustainable. No contemporaneous MSME certificate was produced before the Applicant during sanction/restructuring. Even assuming MSME status, the FRR Framework cannot override IBC nor prevent a financial creditor from initiating CIRP once default is established.

7.7 The plea of forum shopping fails. Proceedings under SARFAESI, Arbitration Act, and IBC operate in distinct spheres. There is no bar under law on pursuing parallel statutory remedies. Mere multiplicity of proceedings does not constitute abuse of process. The provisions of the IBC vest exclusive jurisdiction on the NCLT and the NCLAT to deal with all issues pertaining to the insolvency process of a corporate debtor, and the mode and manner of disposal of its assets. Section 238 reads as follows :

“238. Provisions of this Code to override other laws–
The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of law.

In the case of SBI vs. Abhijeet Ferrotech Ltd. Reported in (2024) ibclaw.in 428 NCLAT the Hon'ble NCLAT has affirmed that under section 238 IBC has overriding powers over the other that laws and Section 7 IBC are an independent proceeding unaffected by proceeding pending under SARFAESI Act.

7.8 The allegations of suppression, false affidavits, incorrect computation, and unclean hands are not supported by any material. On the contrary,

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the Respondent has not produced any cogent evidence to contradict the Applicant's statement of accounts or restructuring terms.

7.9 The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition and the submissions establish that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

7.10 Once the "debt" and "default" is admitted or established the petition must be admitted.

7.11 We are fortified in our view with the decisions of Hon'ble Apex Court which define "Financial Debt" and to initiate Corporate Insolvency Resolution process as under:

(a) Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416:

"any debt to be treated as financial debt, there must happen disbursement of money to the borrower for utilization by the borrower and that the disbursement must be against consideration for time value of money."

(Emphasis added)

(b) Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401:

"the essential condition of financial debt is disbursement against the consideration for time value of money."

(Emphasis added)

(c) Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14)
that:

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“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...”

(Emphasis added)

(d) *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017 has laid down that:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

XXX XXX XXX XXX

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

(Emphasis added)

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8. IA(IB)No. 613/KB/2025 has been filed to seek dismissal of Company Petition (IB) No. 273/KB/2024 on the ground that
- 8.1. The Applicant is impermissible approaching three district forums:
- 8.1.1. IBC for initiating insolvency proceedings;
- 8.1.2. Arbitration for interim reliefs under Section 9 of the Arbitration and Conciliation Act, 1996; and
- 8.1.3. SARFAESI for enforcement of security interests under Section 14.
- 8.2. Section 7 is barred under Section 10A of IBC.
9. In view of the admission of Company Petition (IB) No. 273/KB/2024 by this Adjudicating Authority, **the issues raised in I.A. (IB) No. 613/KB/2025 do not survive for further consideration**. Accordingly, the said Interlocutory Application **stands dismissed** as infructuous, with no order as to costs.
10. In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 273/KB/2024** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:
- i. The Application filed by **Aditya Birla Finance Limited (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Saket Infra Developers Private Limited (Corporate Debtor)**.
- ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code.

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However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- 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 asset 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 (54 of 2002);*
- d)** *The recovery of any property by an owner or lessor where such property is occupied by or in 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 license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

iv. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

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- v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has proposed the name of **“Mr. Mahesh Gupta”**, Address:FE-202,Salt Lake City, Sector -III, 1st Floor, Kolkata- 700106, City Office- 11 & 11/1,B B Ganguly Street, suite no 1, 1st Floor, Kolkata- 700012, Registration no. IBBI/IPA-001/IP-P01489/2018-19/12304,/2016-17/10014, Email mcgupta90@gmail.com, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as letter 1-C-1 to the petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or IIIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Mahesh Gupta”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **‘Mr. Mahesh Gupta’** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

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- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. 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.
- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. 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 opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** 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 CIR Process in respect of the Corporate Debtor.

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- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the

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progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

xvi. The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

11. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

12. Post the Company Petition on **27.03.2026** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

**Cmde Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Signed on this, the 17th day of February, 2026

V. Tiwari (LRA) / M. Jana(P.S.)