IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/19/KOB/2026
(Under Section 7 of the IBC, 2016)

Date of Institution: 28.07.2026

Order Delivered on: 10.09.2026

In the matter of: -

M/s. AKS Cold Storage Limited

Memo of parties:

Indian Bank
254-260, Avvai Shanmugam Salai, Royapettah, Chennai - 600 014 And also at: Indian Bank Stressed Assets Management Branch First Floor, Near Carmel Garden MHS School, Puliakulam Main Road, Coimbatore 641045 Ph: 9442646501 Email: armbcoimbatore@indianbank.co.in.

...Petitioner/Financial Creditor

-Vs.-

M/s. Aks Cold Storage Ltd
A public limited company, SF No. 43 1 G2, Aroor Junction, Aroor Post, Alappuzha, Kerala - 688543.

... Respondent/Corporate Debtor

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI VINAY GOEL

HON'BLE MEMBER (TECHNICAL) : SHRI. RAVICHANDRAN RAMASAMY

Appearances:

For the Petitioners : Mr. Pranoy Harilal, Advocate

For the Corporate Debtor : Mr. Jinish Paul, Advocate

O R D E R

Per Coram

1. The present Petition is filed by Indian Bank (hereinafter referred to as the "Financial Creditors") under Section 7 of the Insolvency and Bankruptcy Code, 2016, (the Code), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against M/s AKS Cold Storage Ltd (hereinafter referred to as the "Corporate Debtor").

2. Part-I of the Form I sets out the particulars of the Financial Creditor, namely, Indian Bank, a Body Corporate incorporated on 05.03.1905, under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its Corporate Office at 254-260, Avvai Shanmugam Salai, Royapettah, Chennai – 600014, and acting through its Stressed Assets Management Branch situated at First Floor, Near Carmel Garden MHS School, Puliakulam Main Road, Coimbatore – 641045.

3. Part-II of the Form I contains the particulars of the Corporate Debtor, namely, M/s. AKS Cold Storage Ltd., bearing Corporate Identification Number (CIN) U63022KL2003PLC015881, incorporated on 9th January, 2003, having its registered office at SF No. 43 1 G2, Aroor Junction, Aroor Post, Alappuzha, Kerala – 688543.

4. Part-III of Form-1 reveals that the Petitioner has proposed Mr. Mahalingam Suresh Kumar, bearing Registration No. IBBI/IPE-0143/IPA-1/2022-23/50033 as the IRP in this matter. A copy of Form-2 is attached with the petition as Annexure-A3.

5. Part-IV of the Form-1 indicates that the date of default as claimed by the Financial Creditor is 31.12.2019 and the date of classification of the account of the Corporate Debtor as NPA is 31.03.2022. The amount in default as claimed in the Petition is Rs.40,48,84,204.89/-. Further, the Financial Creditor issued a Demand Notice dated 26.04.2022 to the Corporate Debtor under Section 13(2) of the SARFAESI Act, 2002.

BRIEF FACTS OF THE CASE:

6. The Corporate Debtor is a Public Limited Company engaged in the business of operating cold storage facilities in Tamil Nadu and Kerala. The Financial Creditor has stated that the lending relationship originated with various entities connected with the AKS Group, including M/s. AKS Cold Storage (Proprietorship), M/s. AKS Food Park (Proprietorship), M/s. AKS Infrastructure (Proprietorship), M/s. S.S. Cold Storage (Proprietorship) and M/s. S.H. Cold Storage Pvt. Ltd. Certain facilities of the said entities were subsequently consolidated and restructured under M/s. S.H. Cold Storage Pvt. Ltd.

7. The Financial Creditor has submitted that loan facilities were initially sanctioned in 2006 for taking over the existing liabilities of M/s. AKS Cold Storage (Proprietorship) and M/s. AKS Food Park (Proprietorship). Thereafter, M/s. S.H. Cold Storage Pvt. Ltd. availed further Term Loan, Working Capital/SOD and AMTL facilities in 2010. The lending arrangement subsequently developed into a consortium arrangement with the erstwhile Syndicate Bank. Inter-se Agreements, Working Capital Consortium Agreements and Joint Deeds of Hypothecation were executed from time to time, with the Financial Creditor acting as the Lead Bank.

8. M/s. S.H. Cold Storage Pvt. Ltd. changed its name to M/s. AKS Cold Storage Pvt. Ltd. on 01.12.2014 and was thereafter converted into a Public Limited Company under the name of the Corporate Debtor. Pursuant to the change in constitution, the existing facilities were realigned and renewed in the name of the Corporate Debtor under the Sanction Letter dated 16.03.2015. The existing limits of certain erstwhile concerns were absorbed by the Corporate Debtor and the Working Capital limit was enhanced to Rs.18 Crore. The Corporate Debtor thereafter executed various acknowledgement and security documents acknowledging the outstanding liability.

9. A further Inter-se Agreement was entered into on 09.12.2016 between the Financial Creditor and the erstwhile Syndicate Bank, followed by execution of the relevant consortium and hypothecation documents. Under the Sanction Letter dated 27.03.2017, the existing SOD/OCC facility of Rs.18 Crore was renewed, AMTL-II of Rs.15 Crore was sanctioned and the earlier AMTL-I facility was fixed at Rs.5.09 Crore. The Corporate Debtor continued to acknowledge its liability through its audited financial statements, Acknowledgements of Debt-cum-Security dated 24.05.2019 and 28.10.2019 and Revival Letter dated 05.12.2019.

10. According to the Financial Creditor, as the Corporate Debtor was unable to service the facilities, the accounts were restructured by a Sanction Letter dated 31.12.2019. The SOD/OCC limit of Rs.18 Crore was bifurcated, with Rs.9 Crore being retained as SOD/OCC and the balance Rs.9 Crore converted into WCTL-1. The outstanding MTL of approximately Rs.5.44 Crore was also rephased. Subsequently, by Sanction Letter dated 23.03.2020 and documents executed on

24.03.2020, the remaining SOD/OCC exposure was converted into WCTL-2, the repayment schedule of WCTL-1 and MTL was modified and accrued interest of approximately Rs.41.50 lakh was converted into FITL. The revised facilities were made repayable in instalments commencing from December 2021.

11. The Financial Creditor has contended that the Corporate Debtor failed to comply with the restructured repayment obligations and the loan accounts were ultimately classified as NPA on 31.03.2022, with effect from 31.12.2019. The relevant accounts relied upon by the Financial Creditor are WCTL-1 Account No. 6846146343, FITL Account No. 6872400004, WCTL-2 Account No. 6872394929 and MTL Account No. 966750488.

12. The Financial Creditor thereafter initiated recovery proceedings before the Debt Recovery Tribunal in OA No.52 of 2023. The Corporate Debtor also instituted securitisation proceedings in respect of the measures taken by the Financial Creditor. It is the case of the Financial Creditor that the Corporate Debtor has not disputed the underlying financial liability in the said proceedings.

13. The Corporate Debtor also submitted various One-Time Settlement (OTS) proposals. By letter dated 26.06.2023, it acknowledged an outstanding of approximately Rs.23.44 Crore as on the NPA date and proposed settlement for Rs.15 Crore. The proposal was rejected by the Financial Creditor. Thereafter, by letters dated 07.02.2025 and 03.10.2025, further OTS proposals were submitted, wherein the Corporate Debtor acknowledged its outstanding liability, while proposing settlement of the dues for a lower amount. The said proposals were also rejected.

14. As per the Financial Creditor, a sum of Rs.40,48,84,204.89 was due and payable by the Corporate Debtor as on 30.06.2026. The Financial Creditor has relied upon the Statement of Accounts and account-wise computation to establish the debt and default. It has also stated that, despite SARFAESI proceedings and sale of secured properties at Mettupalayam and Ooty in January and April 2025 respectively, the outstanding dues remained unpaid. The Financial Creditor has further stated that the facilities are secured by hypothecation and mortgage over movable and immovable properties and by personal and other guarantees.

The reply affidavit filed by the Respondent states as follows: -

15. The Corporate Debtor, in its Reply, opposed admission of the Petition and contended that the Petitioner had failed to establish the foundational requirements of Section 7 of the Code, particularly the date of default, limitation, the legally enforceable financial debt and the quantum of default. It is submitted that the subsequent restructuring of the facilities, coupled with inconsistencies in the Petitioner's records and Information Utility records, rendered the alleged date of default of 31.12.2019 doubtful.

16. The Corporate Debtor contended that the facilities were subsequently restructured on 31.12.2019 and again on 23.03.2020/24.03.2020 into WCTL-1, WCTL-2, FITL and rephased MTL facilities, with revised repayment schedules and repayment holidays. Therefore, according to the Corporate Debtor, the Financial Creditor was required to identify the specific amount or instalment which had become due and payable and remained unpaid as on 31.12.2019, instead of treating the entire subsequently restructured exposure as having defaulted on that date.

17. The Corporate Debtor further disputed the limitation position. It is contended that the Petition was filed beyond the period prescribed under Article 137 of the Limitation Act, 1963, read with Section 238A of the Code, even after giving effect to the exclusion directed by the Hon'ble Supreme Court during the COVID-19 period. The Corporate Debtor disputed the Financial Creditor's reliance upon the OTS letter dated 26.06.2023 as an acknowledgment under Section 18 of the Limitation Act, contending that the said letter was a conditional commercial settlement proposal and did not amount to an unequivocal acknowledgment of the entire liability claimed in the Petition.

18. The Corporate Debtor also questioned the quantum of Rs.40,48,84,204.89 claimed by the Financial Creditor. It is submitted that the Financial Creditor had not furnished a complete reconciliation of the outstanding amount after taking into account the sale proceeds of the secured properties, amounts deposited before the DRT, OTS-related deposits and other recoveries or appropriations.

19. The Corporate Debtor further relied upon certain inconsistencies in the NeSL records. According to it, the NeSL records described the lending arrangement as “Sole Banking” and, in one authenticated record, showed the “Date of Last Acknowledgement of Debt” as “Not Available”, whereas the Financial Creditor relied upon a consortium arrangement in other proceedings and documents. Similar objections were raised with regard to the CERSAI and ROC records, particularly concerning the nature and extent of the security interests and the properties allegedly secured in favour of the Financial Creditor.

20. The Corporate Debtor also contended that the consortium arrangement required consideration. It is submitted that the Inter-se Agreement dated 09.12.2016 contemplated consultation with the consortium members before action was taken by the Lead Bank. The Corporate Debtor relied upon the communication dated 25.06.2020 issued by Canara Bank to contend that there was an objection regarding the restructuring undertaken by the Financial Creditor without informing or discussing the same with the consortium member. It is, however, clarified that the consortium arrangement was not pleaded as an absolute bar to proceedings under Section 7, but as relevant background to determine the effect of the restructuring and the alleged default.

21. The Corporate Debtor accordingly contended that the date of default, quantum of debt, effect of restructuring, limitation and the consistency of the Financial Creditor's own records remained unresolved and that the Petition did not satisfy the requirements of Section 7(5)(a) of the Code.

The Rejoinder filed by the Petitioner states as follows: -

22. In Rejoinder, the Financial Creditor submitted that the Corporate Debtor had not disputed availing the financial facilities, execution of the financing and restructuring documents, disbursal of the facilities or its repeated requests for OTS. It is contended that the Corporate Debtor had acknowledged the subsisting liability and had not demonstrated that the amount in default was below the statutory threshold.

23. The Financial Creditor explained that 31.12.2019 represented the original date of default in respect of the underlying exposure, whereas 31.03.2022 was the date of formal NPA classification. According to the Financial Creditor, the restructuring under the applicable regulatory framework

did not extinguish the antecedent financial debt but merely converted/bifurcated the existing exposure into WCTL-1, WCTL-2, FITL and rephased MTL facilities. The subsequent failure to service the restructured facilities resulted in NPA classification.

24. On limitation, the Financial Creditor relied upon Section 238A of the Code, Article 137 of the Limitation Act, 1963, and the orders of the Hon'ble Supreme Court concerning exclusion of the COVID-19 period. It is submitted that the OTS proposals dated 26.06.2023, 07.02.2025 and 03.10.2025 contained written acknowledgements of liability under Section 18 of the Limitation Act and consequently extended the period of limitation. It is therefore contended that the Petition was filed within limitation.

25. With regard to the quantum, the Financial Creditor submitted that the outstanding amount was supported by the Statements of Accounts and account-wise computation. It is contended that the Corporate Debtor had not identified any specific payment or recovery which had not been accounted for, nor had it produced a competing statement demonstrating that the amount of default was below the statutory threshold.

26. The Financial Creditor further submitted that the references to “Sole Banking” in NeSL or “Sole Finance” in CERSAI did not negate the historical consortium arrangement, as such records reflected the Financial Creditor's individual exposure. The objections concerning ROC charges, CERSAI records and perfection or validity of security interests were stated to be collateral to the determination under Section 7 and incapable of extinguishing the underlying financial debt.

27. It is further submitted that Section 7 permits an individual Financial Creditor to initiate CIRP in respect of its own financial exposure and that the consortium arrangement did not prevent the Financial Creditor from maintaining the present Petition. The Financial Creditor accordingly prayed for admission of the Petition.

Sur-Rejoinder filed by the Respondent states as follows: -

28. In the Sur-Rejoinder/Additional Reply, the Corporate Debtor reiterated that the material inconsistencies raised in the Reply had not been satisfactorily explained by the Financial Creditor, particularly with regard to the date of default, the effect of the restructuring, the historical NeSL records and limitation.

29. With regard to the consortium arrangement, the Corporate Debtor submitted that the facilities were governed by the Consortium Agreement and Inter-se Agreement dated 09.12.2016, under which the Financial Creditor acted as Lead Bank. Referring particularly to Clause 3(q), it is contended that consultation with the consortium members was contemplated before taking action in respect of the consortium facilities. According to the Corporate Debtor, the sanction document itself recorded that the consortium member, Syndicate Bank, "should be informed" regarding the restructuring. The Corporate Debtor relied upon the communication dated 25.06.2020 issued by Canara Bank to the Department of Financial Services as further material requiring reconciliation of the restructuring undertaken by the Financial Creditor.

30. The Corporate Debtor reiterated that the Financial Creditor had not established how the entire debt presently claimed could be treated as having fallen due on 31.12.2019 when the exposure was itself

restructured on that date and subsequently further restructured on 23.03.2020/24.03.2020. It is submitted that the Financial Creditor ought to identify the particular payment obligation which had become due and remained unpaid on 31.12.2019 and explain the basis for carrying the alleged antecedent default into the subsequently created WCTL-1, WCTL-2, FITL and rephased MTL facilities.

31. The Corporate Debtor placed particular reliance on the historical NeSL data. It is pointed out that, in respect of Debt Reference No. 6846146343, the present record reflected a default amount of Rs.8,99,11,252/- with the default date as 31.12.2019, whereas earlier submissions reflected an overdue amount of only Rs.11,32,862/- on 08.01.2020 and NIL overdue on 19.12.2020 and 09.06.2021. Similar variations were pointed out in respect of Debt Reference No. 966750488. It is also pointed out that Debt Reference Nos. 6872394929 and 6872400004 showed a Debt Contract/Debt Start Date of 24.03.2020 while simultaneously reflecting 31.12.2019 as the date of default. According to the Corporate Debtor, these entries required reconciliation with the primary account statements and restructuring documents.

32. On limitation, the Corporate Debtor submitted that, even assuming 31.12.2019 as the date of default and giving the benefit of the COVID-19 exclusion, the limitation period, according to its computation, extended only up to approximately 16.12.2024. It is submitted that the OTS letter dated 26.06.2023 was, at best, within the subsisting limitation period, but did not constitute an unequivocal acknowledgment of the entire liability under Section 18 of the Limitation Act.

33. The Corporate Debtor further contended that the OTS letter dated 26.06.2023 was a conditional settlement proposal made in the context of financial distress, flood-related losses, restructuring issues and multiple banking liabilities. The proposal separately referred to the Indian Bank and consortium exposures and proposed settlement for Rs.15 Crore subject to acceptance and sale of assets. Therefore, according to the Corporate Debtor, the said communication could not automatically be treated as an acknowledgment of the entire debt claimed in the present Petition.

34. Without prejudice, the Corporate Debtor submitted that even if the OTS dated 26.06.2023 were treated as a valid acknowledgment under Section 18 of the Limitation Act, 1963, the fresh period of three years would expire on 26.06.2026, whereas the Petition was filed thereafter. The subsequent OTS communications relied upon by the Financial Creditor would, therefore, have to independently satisfy the requirements of Section 18 of the Limitation Act, 1963, and establish acknowledgment of the very debt forming the subject matter of the present Petition.

35. The Corporate Debtor also relied upon the authenticated NeSL record dated 20.06.2024, which recorded "Date of Last Acknowledgement of Debt – NOT AVAILABLE", and submitted that the said entry required explanation in view of the Financial Creditor's reliance upon the OTS dated 26.06.2023 as an acknowledgment. The description of the lending arrangement as "Sole Banking" was likewise stated to require reconciliation with the consortium documents.

36. The Corporate Debtor further relied upon the demand notice dated 02.06.2022 issued by Canara Bank under Section 13(2) of the SARFAESI

Act, wherein the date of default is stated to be 30.03.2018, as well as the communication dated 25.06.2020 issued by Canara Bank, to contend that the historical chronology of default in the consortium account required examination. The Corporate Debtor also questioned the basis and procedural compliance preceding the NPA classification dated 31.03.2022.

37. In conclusion, the Corporate Debtor submitted that the Financial Creditor had not established a consistent and legally sustainable basis for treating 31.12.2019 as the operative date of default for the debt presently claimed. It is further contended that the OTS communications did not automatically extend limitation and that, even assuming the first OTS dated 26.06.2023 to constitute a valid acknowledgment, the Petition was filed beyond the resultant limitation period. The Corporate Debtor accordingly prayed for dismissal of CP (IB) No.19/KOB/2026 as barred by limitation.

ANALYSIS AND FINDINGS: -

38. The present petition has been filed by the Financial Creditor against the Respondent/Corporate Debtor under Section 7 of the Code for initiation of the Corporate Insolvency Resolution Process on the allegation that the Corporate Debtor had availed and utilised certain credit facilities from the Petitioner Bank under a consortium arrangement with other Financial Creditors and thereafter committed default. The Petitioner Bank had sanctioned restructuring of the loan facilities pertaining to its own exposure, but the Respondent/Corporate Debtor failed to comply with the terms of the restructured facilities and ultimately the Petitioner Bank classified the accounts as NPA. Subsequently, the Petitioner Bank initiated

proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also filed proceedings before the DRT. Thereafter, the Petitioner Bank/Financial Creditor has filed the present petition under Section 7 of the Code on the ground that, despite submission of various OTS proposals from time to time, the Respondent/Corporate Debtor continues to remain in default. The Respondent entered appearance and raised various objections with regard to the maintainability of the Section 7 petition, limitation, correctness of the debt and default, effect of restructuring on the date of default and the quantum of amount claimed by the Financial Creditor. It is further submitted that the sale proceeds of the secured assets, amounts deposited before the DRT and amounts paid pursuant to the OTS proposals had not been duly accounted for by the Financial Creditor. The Respondent also pointed out certain inconsistencies in the NeSL records and alleged non-compliance with the consortium arrangements, including restructuring of the facilities without the knowledge and concurrence of the other consortium members.

39. We have heard the Ld. Counsel appearing for the Petitioner and the Respondent and have gone through the pleadings, documents and written submissions filed on behalf of both the parties. After hearing the rival contentions of both sides, we are of the opinion that the following issues arise for consideration: -

    a. Whether the petition is hit by limitation.
    b. Whether the unsuccessful restructuring arrangements affect the date of default/effect of the RBI circular on the same.
    c. Whether the petition satisfies the requirements of Section 7 of the Code.

d. The effect of sanctioning restructuring without concurrence of other consortium members on the legality of this petition.

40. At this juncture, we would like to reproduce Section 7 of the Code, which reads as under: -

> *Section 7: Initiation of corporate insolvency resolution process by financial creditor.*
> *7. (1) A financial creditor either by itself or jointly[J2] with [1][other financial creditors, or any other person on behalf of the financial creditor, as may be notified[2] by the Central Government] may file[J3] an application for initiating corporate insolvency resolution process against a corporate debtor[J4] before the Adjudicating Authority when a default has occurred.*
> *Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:*
> *Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:*
> *Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.*
> *Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*
> *(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*
> *(3) The financial creditor shall, along with the application furnish—*
> *(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
> *(b) the name of the resolution professional proposed to act as an interim resolution professional; and*
> *(c) any other information[J6] as may be specified by the Board.*
> *(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain[J7] the existence of a default from the*

records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).
(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—
(a) admit the application, if it is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceeding pending against the proposed resolution professional; or
(b) reject the application, if it is satisfied that a default has not occurred or the application under sub-section (2) is incomplete or a disciplinary proceeding is pending against the proposed resolution professional:
Provided that the Adjudicating Authority shall, before rejecting the application under clause (b), give a notice to the applicant to rectify the defect in his application within seven days from the date of receipt of such notice from the Adjudicating Authority:
Provided further that if the Adjudicating Authority has not passed an order under this sub-section within a period of fourteen days from the date of receipt of the application under sub-section (2), it shall record the reasons for such delay in writing.
Explanation I.––For the purposes of this sub-section, it is hereby clarified that where the requirements under clause (a) have been complied with, no other ground shall be considered to reject an application filed under this section.
Explanation II.––For the removal of doubts, it is hereby clarified that where a record of default in respect of a financial debt owed to a financial institution recorded with the information utility has been furnished along with the application filed by such financial institution under this section, such record shall be considered sufficient for the Adjudicating Authority to ascertain the existence of default under this section.
(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).
(7) The Adjudicating Authority shall communicate—
(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;
(b) the order under clause (b) of sub-section (5) to the financial creditor,
within seven days of admission or rejection of such application, as the case may be.

41. It is clear from the above that the existence of debt and default assumes vital significance for initiation of proceedings under Section 7 of the Code, provided that the debt is above the threshold prescribed under Section 4 of the Code and the claim of the Financial Creditor is otherwise within the period of limitation.

42. Along with the Section 7 Petition, the Financial Creditor has annexed the following documents:

   i. Inter-Se Agreements, Working Capital Consortium Agreements and Joint Deeds of Hypothecation dated 14.03.2014 and 09.12.2016 executed in respect of the consortium facilities;

   ii. Guarantee Agreements executed in favour of the Financial Creditor;

   iii. Sanction Letters dated 16.03.2015, 27.03.2017, 31.12.2019 and 23.03.2020, along with the corresponding restructuring, bifurcation, Term Loan, WCTL, FITL, guarantee, hypothecation and other financing documents executed pursuant thereto;

   iv. Acknowledgements of Debt-cum-Security dated 22.09.2015, 13.03.2017, 24.05.2019 and 28.10.2019, Revival Letter dated 05.12.2019 and the relevant audited financial statements of the Corporate Debtor;

   v. OTS proposals dated 26.06.2023, 07.02.2025 and 03.10.2025 submitted by the Corporate Debtor and the corresponding replies issued by the Financial Creditor;

   vi. Tabular computation of the defaulted amounts and the respective dates of default;

   vii. Demand Notice dated 26.04.2022 issued under Section 13(2) of the SARFAESI Act, 2002;

   viii. Relevant Form CHG-1 filings and other records relating to creation of security interests;

   ix. Records of Default obtained from the Information Utility, relevant CIBIL reports and certificates issued under Section 2A of the Bankers' Books Evidence Act, 1891; and

x. Relevant Statements of Accounts demonstrating disbursal of the sanctioned facilities and the outstanding amounts due and payable by the Corporate Debtor.

43. There is no dispute regarding the change in nomenclature of the Corporate Debtor from M/s. S.H. Cold Storage Pvt. Ltd. to M/s. AKS Cold Storage Pvt. Ltd. with effect from 01.12.2014, and its subsequent conversion from a Private Limited Company into a Public Limited Company under the same name. The Respondent has failed to question the correctness, authenticity and validity of the aforesaid documents. Further, there is no issue with regard to the availment of the credit facilities by the Corporate Debtor or the execution of the relevant loan and security documents. The Respondent has also not disputed the fact that the Corporate Debtor had availed the financial facilities and that the same were subsequently restructured. Thus, there is, in substance, no dispute with regard to the existence of the financial debt. Further, the Respondent has failed to controvert the correctness and genuineness of the statements of accounts annexed to the Section 7 Petition by placing on record any specific or competing statement of account. Though the Respondent has disputed the amount of Rs.40,48,84,204.89 claimed in the Petition, such a vague and general denial would not be sufficient to defeat the present proceedings, particularly when the amount claimed is admittedly much above the statutory threshold. In this regard, reliance has been placed on the judgment of the Hon'ble National Company Law Appellate Tribunal in ***Gouri Prasad Goenka, Ex-Chairman of NRC Limited v. Punjab National Bank and Anr.***, 2019 SCC OnLine NCLAT 1137, wherein, at paragraph 11, the Hon'ble Appellate Tribunal observed as follows:

> *"11. ...In so far as joining of issue by the Corporate Debtor qua the quantum of payable debt is concerned, same does not fall for consideration of the Adjudicating Authority at the stage of admission of the application under Section 7 of the I&B Code. The only requirement is that the minimum outstanding debt should be to the tune of Rupees One Lakh. The actual amount of claim is to be ascertained by the Resolution Professional after collating the claims and their verification which comes at a later stage. The contention raised on this score also fails."*

44. The aforesaid decision makes it clear that a mere dispute as to the quantum of debt, without disputing its existence or default, would not defeat an application under Section 7 of the Code. At this stage, the role of this Adjudicating Authority is limited, and it is not expected to undertake a detailed reconciliation of the accounts or examine every individual transaction between the parties at this stage. In the present case, the Respondent has neither disputed the financial facilities or the relevant documents nor placed on record any competing statement of account. Accordingly, the defence raised by the Corporate Debtor with regard to the quantum of debt is not tenable at this stage.
45. The Respondent has further raised a defence that the Petitioner/Financial Creditor had sanctioned restructuring of the facilities without the concurrence of the other consortium members and in violation of the consortium arrangements. In our opinion, such a defence is not available to the borrower to defeat the proceedings under Section 7 of the Code. If there is any inter se dispute or issue between the consortium members, the same has to be resolved by them in accordance with the terms of the consortium/inter-se arrangements. The Corporate Debtor cannot be permitted to take advantage of an inter se dispute between the Financial Creditors so as to delay or defeat the insolvency

proceedings, particularly when the existence of the financial debt and the default are otherwise established.

46. The date of default as claimed by the Petitioner/Financial Creditor is 31.12.2019, whereas the date of NPA is 31.03.2022. It is alleged that there was persistent default in the account of the Corporate Debtor; however, with a view to extend cooperation and facilitate repayment, the Petitioner Bank restructured the credit facilities on 31.12.2019, pursuant to which the Corporate Debtor executed the requisite documents. The facilities were thereafter further restructured/rephased pursuant to the Sanction Letter dated 23.03.2020 and documents executed on 24.03.2020. However, the Corporate Debtor ultimately failed to adhere to the terms of the restructured facilities. The Petitioner Bank has also relied upon RBI Circular dated 07.06.2019, and has taken the stand that, upon failure of the restructuring arrangements, the date of default would relate back to the original date of default.

47. We find no inconsistency in the stand taken by the Petitioner Bank in this regard. In terms of the applicable RBI guidelines and banking norms, upon failure of a restructuring arrangement, the date of default relates back to the earlier date, as though no restructuring had taken place. The date of default and the date of classification of an account as NPA are two distinct concepts. The date of NPA ordinarily succeeds the occurrence of default, though the date of default may precede the date of NPA classification. The date of default has its own significance under the Code, as it is relevant for determining the period of limitation for filing an application under Section 7 of the Code.

48. Reliance can be placed on the judgment of the Hon'ble National Company Law Appellate Tribunal in ***Puneet P. Bhatia v. ASREC (India) Ltd. & Anr.,***

Company Appeal (AT) (Insolvency) No. 139 of 2024, decided on 09.12.2024, for the proposition that upon failure of the restructuring arrangement, the original date of default survives. The relevant observations of the Hon'ble Appellate Tribunal are reproduced here as under: -

> *41. The appellant has also argued that the amendment of the default date by the respondent constitutes procedural manipulation aimed at bypassing Section 10A protections. However, it is seen that the amendment was duly made during the CIRP proceedings before the AA, as per laid down procedure following the principles of natural justice. The AA exercised its discretion appropriately in allowing the amendment. The appellant has not demonstrated any prejudice resulting from this amendment or any procedural irregularities in the tribunal's decision to permit it.*
>
> *42. We have seen from the above discussion that as per the provisions of the Code, the NCLT is empowered to allow the parties to amend the pleadings before the final orders in CIRP proceedings are passed. This would however be subject to the procedure laid down in the code, as confirmed by Dena Bank (Supra). We have observed that the Adjudication Authority in this case has correctly followed the laid down process and the judgement of Dena bank (supra) is applicable squarely in this case. We therefore hold that the amendment of date of default has been correctly allowed by AA.*
>
> *43. In determining the validity of the amended date of default, it is crucial to examine the evidence relied upon by the respondent. It is seen that RBI as the regulatory authority during the inspection of the bank found that compliance with the conditions laid down in the sanction letters were not met and hence the CD was ineligible for restructuring. Accordingly, due to non-compliance the extent sanction letter dated 17.03.2020 became void abinitio and the same was not tenable in the eyes of law. Banks have to mandatorily comply with the guidelines of the RBI in this regard. Therefore, the date of NPA became 01.11.2019 and the original date of default would be 02.08.2019 i.e., 90 days prior the date of NPA as per RBI IRAC Guidelines. The amended date of 02.08.2019 is also supported by records from the National E-Governance Services Limited (NESL)*

database, which confirms the occurrence of a default prior to the COVID-19 moratorium period.

47. In the present case, the subsequent restructuring/rephasing of the credit facilities cannot be construed as extinguishing the original default or creating an altogether fresh financial liability to wipe out the original date of default. The restructuring was undertaken solely to provide the Corporate Debtor with an opportunity to regularise the account and discharge its existing financial obligations. However, the Corporate Debtor admittedly failed to comply with the terms of the restructured facilities, resulting in the continued subsistence of the default. Therefore, merely because the facilities were subsequently restructured or rephased, the original date of default cannot be said to have ceased to exist. In view of the aforesaid principle laid down by the Hon'ble NCLAT in *Puneet P. Bhatia v. ASREC (India) Ltd.* (supra), the original date of default, i.e., 31.12.2019, continues to be relevant as the date of default under Section 7 of the Code.
48. At this juncture, it is pertinent to consider the issue of limitation in light of the orders passed by the Hon'ble Supreme Court of India in Suo Motu Writ Petition (Civil) No. 3 of 2020 concerning the Extension of Limitation, as well as the judgment dated 01.03.2024 in *M/s Arif Azim Co. Limited v. M/s Aptech Limited, (2024) INSC 155*, wherein it was held that the period from 15.03.2020 to 28.02.2022 shall stand excluded while computing the period of limitation.
49. Therefore, while computing the period of limitation in the present case, the period from 15.03.2020 to 28.02.2022, comprising 715 days, is liable to be excluded in terms of the directions issued by the Hon'ble Supreme Court. Accordingly, taking 31.12.2019 as the date of default, the balance

period of limitation available as on 15.03.2020 would become available with effect from 01.03.2022 and the limitation period would consequently expire on 15.12.2024. However, before the expiry of the said period, the Corporate Debtor submitted the OTS proposal dated 26.06.2023, and thereafter submitted further OTS proposals dated 07.02.2025 and 03.10.2025, thereby evidencing the continued subsistence of the liability towards the Financial Creditor.

49. The Corporate Debtor has taken the defence that the claim filed by the Financial Creditor is barred by limitation. We have carefully considered the submissions made by the Respondent in this regard. The Financial Creditor, in support of its contention that the claim is within limitation, has relied upon the following documents: -
    i. Acknowledgement of Debt-cum-Security dated 24.05.2019, and 28.10.2019
    ii. Revival Letter dated 05.12.2019;
    iii. Sanction Letter dated 31.12.2019 and the documents executed pursuant to the restructuring of the credit facilities;
    iv. Sanction Letter dated 23.03.2020 and the documents executed on 24.03.2020 pursuant to the further restructuring/rephasing of the credit facilities;
    v. Audited Financial Statements of the Corporate Debtor for the relevant period;
    vi. OTS proposal dated 26.06.2023, 07.02.2025, and 03.10.2025 submitted by the Corporate Debtor;

50. In the present case, the date of default as claimed by the Petitioner/Financial Creditor is 31.12.2019. If the said date is taken as the

date of default, the present Petition would fall within the period of limitation on the following scores:

i. The Corporate Debtor has acknowledged the subsisting financial liability from time to time through its financial statements, acknowledgement of debt and other documents executed in favour of the Financial Creditor.
ii. The Corporate Debtor, vide its OTS proposal dated 26.06.2023, has specifically stated that the Term Loan and Working Capital facilities availed from the Indian Bank were outstanding and that the balance amount as on the date of NPA was Rs.23.44 Crore. The Corporate Debtor thereafter proposed to settle the said liability for a sum of Rs.15 Crore.
iii. Though the said OTS proposal contains certain grievances raised by the Corporate Debtor against the Financial Creditor with regard to the consortium arrangement, restructuring of the facilities, flood-related losses and other issues, there is no denial of the subsisting liability towards the Financial Creditor and in the so-submitted OTS proposal the Corporate Debtor has admitted relationship of Creditor and Debtor with the Petitioner. On the contrary, the Corporate Debtor has sought settlement of the said outstanding liability for a lesser amount.
iv. In our opinion, merely because the OTS proposal was for settlement of the dues for a lesser amount and was subject to acceptance by the Financial Creditor, the same would not take away the acknowledgement of the subsisting liability contained therein. The said OTS proposal, therefore, constitutes an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963.

v. The Corporate Debtor thereafter submitted further OTS proposals dated 07.02.2025 and 03.10.2025, which further demonstrate that the liability towards the Financial Creditor continued to subsist.

vi. Accordingly, the acknowledgement contained in the OTS proposals dated 26.06.2023, 07.02.2025 & 03.10.2025 gives rise to a fresh period of limitation in terms of Section 18 of the Limitation Act, 1963. The period directed to be excluded by the Hon'ble Supreme Court during the COVID-19 pandemic is also liable to be given effect to while computing the period of limitation in terms of Section 238A of the Code read with the Limitation Act, 1963.

51. In view of the aforesaid facts and circumstances, we find that the present Petition is filed within the period of limitation. The contention of the Respondent/Corporate Debtor that the OTS proposals dated 26.06.2023, 07.02.2025 & 03.10.2025 were merely a conditional settlement proposal and did not constitute an acknowledgement of liability under Section 18 of the Limitation Act, 1963, is not tenable.

52. Reliance may also be placed on the judgment of the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank Ltd.***, (2018) 1 SCC 407. The relevant portion of the judgment is reproduced hereunder:

> *"**28**. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the*

applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that 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, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

53. The aforesaid principle makes it clear that, at the stage of admission of an application under Section 7 of the Code, the Adjudicating Authority is required to satisfy itself as to the existence of a financial debt, and the occurrence of default. In the present case, the Financial Creditor has successfully established the existence of the financial debt and the occurrence of default. The Corporate Debtor has not disputed the availment of the financial facilities or the execution of the relevant loan and security documents, and the subsisting liability also stands acknowledged through the documents executed from time to time, including the OTS proposals dated 26.06.2023 which have already been

held hereinabove to constitute an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963. The objection with regard to the effect of restructuring and the date of default is also not tenable in view of the failure of the Corporate Debtor to adhere to the terms of the restructured facilities. The Petition has been filed within the prescribed period of limitation, the amount in default exceeds the threshold prescribed under Section 4 of the Code, and the application is otherwise complete in all respects. Accordingly, this Adjudicating Authority is satisfied that the requirements of Section 7 of the Code stand fulfilled and finds it a fit case to admit the Petition and initiate the Corporate Insolvency Resolution Process against the Corporate Debtor in accordance with law.

54. This Adjudicating Authority finds no legal impediment to the admission of the application under Section 7 of the Code. Accordingly, CP(IBC)/19/KOB/2026 is allowed with the following directions:

A. The Petition bearing No. CP(IBC)/19/KOB/2026 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of the Corporate Insolvency Resolution Process is **ADMITTED.**

B. We declare a moratorium in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016. The necessary consequences of imposing the moratorium shall follow.

C. The Financial Creditor has proposed the name of Mr. Mahalingam Suresh Kumar, bearing Registration No. IBBI/IPE-0143/IPA-1/2022-23/50033, having address at 2nd Floor, CODISSIA, G.D Naidu Towers, Huzur Road, Coimbatore - 641018. Email ID: msureshkumar@icai.org, Mob: +91 73730 52341, as an Interim

Resolution Professional (IRP), and the written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP. Hence, this Adjudicating Authority appoints **Mr. Mahalingam Suresh Kumar**, bearing **Registration No. IBBI/IPE-0143/IPA-1/2022-23/50033,** having address at **2nd Floor, CODISSIA, G.D Naidu Towers, Huzur Road, Coimbatore - 641018. Email ID:** msureshkumar@icai.org, Mob: +91 73730 52341, as an **Interim Resolution Professional (IRP)** to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor**.** The designated IRP shall perform all his functions as contemplated under the Code and must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code.

D. In pursuance of Section 13(2) of the Insolvency and Bankruptcy Code 2016, we direct the IRP to make a public announcement immediately about the admission of this application under Section 7 of the Code. The expression immediately means within three days from the date of appointment, as clarified by the explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. During the CIRP period, the management of the Corporate Debtor shall vest in the Interim Resolution Professional (IRP)/Resolution Professional (RP), as the case may be, in terms of Section 17 of the Code. The Powers of the Board of Directors of the Corporate Debtor shall stand suspended and be exercised by the IRP/RP. 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.

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

F. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority a periodical report with regard to the progress of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

G. The Financial Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).

H. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt of a copy of this Order.

55. The present Company Petition bearing No. **CP(IBC)/19/KOB/2026** is **admitted** accordingly.

56. The Registry is hereby directed to send e-mail copies of this order forthwith to all the parties and their counsel for information and to take necessary steps.
57. Let the certified copy of this order be issued upon compliance with the requisite formalities.
58. File be consigned to records

Sd /-	**Sd /-**
RAVICHANDRAN RAMASAMY	**VINAY GOEL**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Signed on this 10th day of September, 2026.

*A*_Steno A*