IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

IB-485 (ND)/2025

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

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED

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

Versus

WEST HARYANA HIGHWAYS PROJECT PRIVATE LIMITED

..... Corporate Debtor

Order Pronounced On: 15.10.2026

CORAM:

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

SHRI RAVINDRA CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

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

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

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

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

Brief Background

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

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

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

SUBMISSIONS OF THE APPLICANT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUBMISSIONS OF THE RESPONDENT/CORPORATE DEBTOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

restructuring step involving issuance and allotment of equity securities.

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

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

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

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

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

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

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

Present proceedings are barred by Doctrine of Res Judicata

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

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

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

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

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

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

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

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

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

REJOINDER BY FINANCIAL CREDITOR

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

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

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

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

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

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

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

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

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

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

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

59. <u>Analysis and Findings</u>

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

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

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

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

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

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

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

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

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

o. Assignment Agreement dated 28.06.2024.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Corporate

Debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.

[Explanation -For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force,

shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sd/-

(RAVINDRA CHATURVEDI)

MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)

MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

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

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

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED

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

Versus

WEST HARYANA HIGHWAYS PROJECT PRIVATE LIMITED

..... Corporate Debtor

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

ERA INFRA ENGINEERING LIMITED

.... Applicant

Versus

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED

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

.... Respondent

Order Pronounced On: 15.10.2026

CORAM:

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

SHRI RAVINDRA CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

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

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

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

"a. Allow the present Application;

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

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

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

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

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

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

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

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

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

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

iii. The Resolution Plan of the Applicant/EIEL provides that the Unsecured Financial Creditors (which includes the Respondent herein) shall get 10% from the arbitral proceeds in pro rata manner and the remaining balance

shall be converted into 1% equity, which was approved by the creditors of the Applicant. That the Respondent, after the assignment of debt in its favor has merely stepped into the shoes of such. Assignors, and has also executed the definitive documents pursuant to approval of the resolution plan of the Applicant and thus, it cannot go beyond the decisions which were taken by the Assignee Banks.

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

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

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

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

D. Any outstanding debt has eclipsed through equity allotment

i. Pursuant to the approval of the Resolution Plan of the Applicant/EIEL vide Order dated 11.06.2024 passed by this Adjudicating Authority, the Respondent has already been paid as per the terms of the said Resolution Plan thereby settling the debt owed by the Corporate Debtor to the Respondent. The Resolution Plan of the Applicant/EIEL provided that the unsecured Financial Creditors shall get 10% of the arbitral proceeds in pro rata basis and the balance amount shall be converted into 1% equity shares.

ii. In this regard. a communication dated 16.10.2025 was issued in relation to preferential allotment records which reflects that equity shares of the Applicant were credited in the depository system pursuant to corporate action executed through the Registrar and Transfer Agent, Beetal Financial & Computer Services Pvt. Ltd. in favor of the Respondent. The said intimation specifies that shares bearing ISIN INE039E01038 were credited on 16.10.2025 in favor of the Respondent for the entire balance debt of the Corporate Debtor, thereby evidencing implementation of a

corporate restructuring step involving issuance and allotment of equity securities.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Analysis and Findings

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

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

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

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

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

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

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

(b) with the intent to defraud any person,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

xxvii. **One of the essentials required under Section 65 of the Code is** initiation of CIRP/liquidation "fraudulently" or with "malicious intent" for a purpose other than resolution of insolvency. In the instant Application, CP (IB) -485/2025 filed under Section 7 of the Code is based on a financial debt of the Corporate Debtor as principal borrower under Term Loan Agreements and subsequent classification of the Account as NPA. The Financial Creditor has placed on record Balance Confirmation Letter dated 04.11.2024 written by the Applicant/West Haryana Highways Projects Private Limited to National Asset

Reconstruction Company Ltd. confirming the principle outstanding amount of Rs.385, 90, 52,099/- (Rupees Three Hundred Eighty Five Crores Ninety Lacks Fifty Two Thousand Ninety Nine Only) plus interest as per loan agreement. Further on perusal of the Balance Sheet of the Corporate Debtor for the year 2024-2025 it is apparent that the Corporate Debtor in its Balance Sheets has also acknowledged its liability towards National Asset Reconstruction Company Ltd. Unless the Corporate Debtor can adduce any satisfactory evidence showing that the Financial Creditor initiated the process either "fraudulently" or with "malicious intent", the petition is presumed to be a bona fide exercise of legal rights. Therefore the Applicant has not been able to demonstrate any element of initiation of CIRP/liquidation "fraudulently" or with "malicious intent".

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

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)

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

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III

IA-2634/2026
In
IB-485 (ND)/2025

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

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED

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

Versus

WEST HARYANA HIGHWAYS PROJECT PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-2634/2026:

ERA INFRA ENGINEERING LIMITED .... Applicant

Versus

NATIONAL ASSET RECONSTRUCTION COMPANY LIMITED

.... Respondent

Order Pronounced On: 15.10.2026

CORAM:
SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI RAVINDRA CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

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

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This application has been filed under Rule 11 of the NCLT Rules 2016, by the Applicant, M/s Era Infra Engineering Limited for placing on

record additional documents i.e., Judgement of the Hon'ble Supreme Court in Anjani Technoplast Ltd. v. Shubh Gautam (Civil Appeal No. 8247 of 2022) and Letter dated 22.04.2026 addressed to the Director of the Corporate Debtor.

Brief Background

2. An Application bearing I.A. No. 995 of 2026 has also been filed by Era Infra Engineering Limited ("Applicant") under Section 65 of the Insolvency and Bankruptcy Code, 2016 ("Code") seeking initiation of fraudulent and malicious initiation of the CIRP.

SUBMISSIONS OF THE APPLICANT

3. It is submitted that in continuation of the Application filed under Section 65 of the Code the Applicant is constrained to place on record certain additional and subsequently available documents which are material for the proper adjudication of the issues involved in I.A. No. 995 of 2026. The said documents could not be filed earlier due to inadvertence and/or non-availability at that stage.

4. It is submitted that the documents sought to be placed on record are as follows:

> **a**. The Judgment of the Hon'ble Supreme Court in the case of Anjani Technoplast Ltd. v. Shubh Gautam (Civil Appeal No. 8247 of 2022) dated 23.04.2026 which is squarely relevant for the purposes of the present proceedings as it reiterates the settled legal position that the Code is not a debt recovery mechanism and cannot be invoked as a substitute for execution proceedings or for coercive recovery of disputed dues. The said judgment further clarifies the limited contours within which the insolvency jurisdiction may be exercised and reinforces the statutory bar against abuse of process under Section 65 of the Code. In view of the Applicant's specific plea that the present proceedings are vitiated by mala fides and amount to an abuse of the insolvency framework, the said judgment directly governs

the issues of maintainability and misuse of process arising in the present Application. The relevant portion of the judgement has been reproduced below for ready reference:

> "32. In the present case, the facts speak for themselves. The respondent held a decree. He did not file execution proceedings. He chose instead to file a Section 7 petition against a solvent, functioning company. The quantum of the 'debt' itself, as contemplated under the code, is seriously disputed. The appellant has deposited Rs. 3,60,98,847/- with the Registrar General of the Delhi High Court and has consistently maintained its willingness to pay whatever is lawfully due. The proceedings pending before the Delhi High Court, including the application under Section 151 of the CPC and the proceedings under Section 340 of the CrPC, remain undetermined. In these circumstances, the initiation of CIRP is nothing more than the use of the IBC as a recovery mechanism. We will term it as an abuse of the process."

b. Letter dated 22.04.2026 by the Oversight Committee to the Director of the Corporate Debtor is a crucial document as it constitutes a contemporaneous and authoritative assertion by the Oversight Committee regarding the nature of the NHAI arbitration proceeds and the admitted beneficial interest of the Applicant. The said letter records that the arbitration proceeds are being treated as assets of the Applicant held in trust by the Corporate Debtor and are required to be appropriated in accordance with the approved Resolution Plan and related security arrangements. It further evidences the contractual and financial framework governing the distribution of arbitral proceeds, thereby directly impacting the determination of rights, obligations, and alleged recoveries sought to be enforced in the present insolvency proceedings.

SUBMISSIONS OF THE RESPONDENT

5. It is submitted that the Applicant's reliance on the judgment in Anjani Technoplast Ltd. v. Shubh Gautam (Civil Appeal No. 8247 of 2022) is fundamentally misplaced, as the factual matrix of that case is wholly distinguishable from the present matter. The Corporate Debtor in the present case has unequivocally acknowledged its liability across multiple documents. This includes the balance confirmation dated 04.11.2024, continuous and consecutive admissions in its balance sheets from FY 2014-15 to FY 2024-25. Furthermore, the admitted debt and default clearly exceed an amount of approx. Rs. 1,700 Crores, squarely meeting the statutory threshold under the Insolvency and Bankruptcy Code, 2016 ("Code").

6. It is further submitted that the Letter dated 22.04.2026 by the Oversight Committee of the Era Infra Engineering Ltd. to the Corporate Debtor and the Respondent herein has been duly responded to by the Respondent on 18.05.2026. The Respondent has categorically objected to the contents of the Letter dated 22.04.2026 and, inter alia, relied on the judgment of BRS Ventures Investments Ltd. v. Infrastructure Finance Ltd., (2025) 1 SCC 456, wherein the Hon'ble Supreme Court reiterated that a holding company does not own the assets of its subsidiary merely by holding shares in it. The Respondent further stated that an identical contention was raised by the Applicant in the CIRP of Haridwar Highways Project Ltd. (another SPV of the Applicant) which was categorically rejected by this Adjudicating Authority, Hon'ble National Company Law Appellate Tribunal and the Hon'ble Supreme Court. Thus, the issues raised by the oversight committee, at the instance of the promoters of the Applicant, have already reached a quietus. It is pertinent to note that such objections were never raised in the CIRP of Haridwar Highways Project Ltd. and Bareilly Highways Project Ltd. and appear to have been an afterthought instigated by the promoters of the Applicant.

7. It is submitted that contentions raised by the Oversight Committee are in fact contrary to the Insolvency and Bankruptcy Code, 2016, in as much as the assets of the subsidiary cannot be included in the CIRP of the holding company and the same are legally untenable. It is further submitted that fallacy in the letter dated 22.04.2026 is also evident from the fact that the Plan Approval Order dated 11.06.2024 passed by this Tribunal in CP(IB) No. 190 of 2017 specifically deals with the issues pertaining to subsidiary companies of EIEL and assets of such subsidiaries being included in the Resolution Plan of the Applicant. This Tribunal has issued specific observations and findings that the SA Infrastructure Consultants Pvt. Ltd. i.e., the SRA of the Applicant ("SRA"), can only be exercised only in accordance with the provisions of the Code and that it was not inclined to pass any reliefs under Clause 8.2 of the Resolution Plan. Thus, this Hon'ble Tribunal excluded any control of the SRA over the assets of the subsidiaries of the Applicant.

8. It is contended that a holding company does not own the assets of its subsidiary merely by holding shares in it, further Hon'ble Supreme Court in its judgement in the case of BRS Ventures Investments Ltd. v. Infrastructure Finance Ltd., (2025) 1 SCC 456, has observed as under:

> *"….Whether the assets of the corporate debtor were part of CIRP in respect of ACIL — corporate guarantor*
>
> *29. Now, we will deal with the submissions made by the appellant that the assets of the 2nd respondent corporate debtor were also a part of the CIRP in respect of ACIL. This submission was made on the ground that according to the appellant, the information memorandum published in accordance with Section 29 IBC indicates taking over of the business of ACIL and the 2nd respondent corporate debtor. Clause 3, under the heading "SEZ Business" in the information memorandum, specifically mentions that ACIL has acquired, through its subsidiary (2nd respondent corporate debtor), 296 hectares of land for setting up the SEZ project. It is further stated that the entire project cost of SEZ, inclusive of land acquisition, was financed through equity and unsecured loans contributed by ACIL. It further records that SEZ is a separate company. However, it is stated that the financial obligations of the SEZ units are on ACIL. As SEZ is stated to be a separate company, it is not included in the resolution plan, which was duly approved. As rightly found by Nclat, the resolution*

plan takes care only of the investments of ACIL in the subsidiaries and not the assets of subsidiaries. As indicated in the subsequent paragraphs, considering the scheme of the IBC, assets of a subsidiary company cannot be part of the resolution plan of the holding company…

…31. There is a mandate of clause (d) of sub-section (4) of Section 36 IBC that the assets of an Indian subsidiary of the corporate debtor shall not be included in the liquidation estate assets and shall not be used for the recovery in liquidation. Section 18 entrusts several duties to the IRPs concerning the corporate debtor's assets. Consistent with the provisions of Section 36(4)(d), Explanation (b) to Section 18(1) provides that the term "assets" used in Section 18 shall not include the assets of any Indian subsidiary of the corporate debtor. Perhaps the reason for including these two provisions is that it is well-settled that a shareholder has no interest in the company's assets….

…33. A holding company and its subsidiary are always distinct legal entities. The holding company would own shares of the subsidiary company. That does not make the holding company the owner of the subsidiary's assets. In Vodafone International Holdings BV [Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867 : (2012) 170 Comp Cas 369] , this Court took the view that if a subsidiary company is wound up, its assets do not belong to the holding company but to the liquidator. As mentioned in the decision, the reason is that a company is a separate legal persona and the fact that the parent company owns all its share has nothing to do with its separate legal existence. Therefore, the assets of the subsidiary company of the corporate debtor cannot be part of the resolution plan of the corporate debtor…"

9. It is submitted that Applicant has suppressed material documents including the Clarification and Modification Affidavit dated 28.11.2022 which was to be read together with the Resolution Plan submitted by the SRA. Moreover, the said Affidavit would infact override the Resolution Plan in case of conflict between the Affidavit and the Plan.

10. It is submitted that the said Affidavit clearly protected the rights of the Respondent and clarified that the Respondent would continue to retain all rights and remedies against the Corporate Debtor/Principal Borrower in terms of the loan agreements.

11. Analysis and Findings

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

ii. During the course of arguments this Adjudicating Authority vide on 17.07.2026 prima facie observed that the documents sought to be placed on record are required for proper adjudication of the present case. The order dated 17.07.2026 is reproduced below:

> ***"IA-2634/2026***
>
> *We have heard the submissions of Mr. Anirban Bhattacharya, Ld. Counsel appearing on behalf of the Applicant.*
>
> ***We are of the prima facie view that the documents sought to be placed on record are required for proper adjudication of the present case.***
>
> *Mr. Abhishek Anand, Ld. Counsel appearing on behalf of the Respondent seeks time to file reply.*
>
> *One week time granted.*
>
> *List the matter on 21.07.2026.*
>
> *Matter heard in part."*

iii. Having regards to the facts and circumstances of the case, the documents are taken on record. I.A.-2634/2026 is accordingly disposed of.

Sd/-	**Sd/-**
(RAVINDRA CHATURVEDI)	**(BACHU VENKAT BALARAM DAS)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**