NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1056 of 2026
&
I.A. No. 4161, 4162 of 2026

IN THE MATTER OF:

Sudarshan Aithal **...Appellant(s)**
Suspended Director of Distribution
Logistics Infrastructure Pvt. Ltd.

Versus

Bank of India & Ors. **...Respondent(s)**

Present:

For Appellant : Mr. Kunal Tandon Sr. Adv. with Mr. Sinha Shrey Nikhilesh, Mr. Parth Davar, Mr. Kaustubh Khanna, Mr. Swastik Verma & Ms. Faraaz Khan, Advocates

For Respondents : Mr. Ricky Sampat, Advocate for R-1
Mr. K. Datta Sr. Adv. with Mr. Angad Baxi, Ms. Ratema Kachwalla, Ms. Aparna Singh, Mr. Harsh Gurbani & Ms. Alina Mathew, Advocates

O R D E R
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

Mr. Sudarshan Aithal K, Suspended Director of the Distribution Logistics Infrastructure Private Limited, has preferred this appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (Code), read with Rule 11 of the NCLAT Rules, 2016, against the impugned order dated 14.05.2026 passed by the National Company Law Tribunal, Mumbai Bench – VI, Adjudicating authority in Company Petition (IB) No. 1078 of 2025, whereby the Corporate Insolvency Resolution Process (CIRP) has been initiated against the Appellant on an application filed by Respondent No. 1/Bank of India under Section 7 of the IBC.

2. Necessary facts required for disposal of the instant appeal, as reflected in the impugned order, are that an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (Code), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016), was preferred by the Bank of India against the CD with the facts that the financial creditor had sanctioned a term loan of Rs. 57.50 Crore to Vikram Logistics Limited, which later changed its name to Distribution Logistics Infrastructure Private Limited (CD) for its container trains project, vide its sanction reference dated 21.01.2013.

3. It is stated that in 2014, the said term loan was restructured by sanctioning an additional term loan of Rs. 4.89 crores, and the existing term loan of Rs. 48.01 crores were enhanced to Rs. 52.90 crores via sanction letter dated 11.12.2014. In 2016, the credit facilities sanctioned to the CD were again reviewed and restructured via sanction letter dated 06.10.2016 and the existing credit limits sanctioned to the CD were accordingly reviewed with an aggregate sanctioned limit of Rs. 68.84 crores by sanctioning a revised repayment plan for the term loan and FITL.

4. It is further stated that the above-stated credit limits were sanctioned/disbursed/renewed under the consortium banking arrangement, wherein Punjab National Bank was the lead bank and financial creditor, Bank of Baroda, Union Bank of India, and State Bank of India, as well as LNTFL, were the other member banks. In 2021, the CD approached all existing term lenders, including the Bank of India for one-time restructuring and agreeing

with the aforesaid request, all three members of the consortium came together and formed a single consortium led by Bank of Baroda.

5. It is further stated that, vide sanction letter dated 22.06.2021, the credit limits were renewed, and all banks under the consortium executed a master restructuring agreement on 26.06.2021 and again in 2022. The credit limits were reviewed by the financial creditor through its sanction letter dated 30.06.2022, however, thereafter, the CD did not take any steps to regularize the account, and the default occurred on 29.12.2022. The financial creditor classified the cash credit account of the CD as NPA on 28.03.2023. The financial creditor issued a demand notice on 23.12.2024 under Section 13(2) of the SARFAESI Act, 2002, however, there was no positive response from the CD.

6. In pursuance of the notice issued by the Learned Adjudicating Authority the reply has been filed by the Appellant. The Learned Adjudicating Authority, after hearing learned counsel for the parties, by order dated 14.05.2026, allowed the petition filed by the financial creditor and initiated the CIRP against the CD. Being aggrieved by the same, the instant appeal has been preferred by the suspended director of the CD.

7. It is worth mentioning, that during the course of the pendency of the proceedings before this Appellate Tribunal, Respondent Bank of India along with other lenders of the corporate debtor, entered into an assignment agreement dated June 30th, 2026, executed by the Bank of India and other lenders of the corporate debtor. The loan has been assigned by these banks in favour of the JM Financial Asset Reconstruction Company Limited. Thereafter, an application has been filed by JM Financial Asset

Reconstruction Company Limited before this Appellate Tribunal for substituting it in place of Respondent No. 1, Bank of India. The same was disposed of by an order dated 22.07.2026 passed by this Appellate Tribunal, and JM Financial Asset Reconstruction Company Limited was arrayed as Respondent No. 3.

8. We have heard Shri Kunal Tandon, learned senior counsel, appearing for the Appellant, as well as Shri Krishnendu Datta, learned senior counsel, appearing for Respondent No. 3, and Mr. Riki Sampath for Respondent No. 1, and perused the record.

9. Learned counsel for the Appellant submits that on 06.06.2009, the directors of Vikram Logistics and Maritime Services Private Limited ('VLMSPL') now Distribution Logistics Infrastructure Pvt. Ltd. ('DLIPL') executed a Board Resolution approving the drawing of loan from BOB Consortium and on 27.06.2009 and 28.03.2013 common Loan Agreements were executed between Vikram Logistics & Maritime Service (P) Ltd. (now known as Distribution Logistics Infrastructure (P) Ltd.) as Borrower and the Bank of Baroda consortium as lenders for credit facilities and the Punjab National Bank, Bank of Baroda, Bank of India, Dena Bank and the Corporate Debtor; by virtue of which a consortium of banks was formulated of which the Punjab and National Bank was made as the lead bank.

10. It is further submitted that the Corporate Debtor had availed cash credit facilities from two consortium of banks i.e. (A) Bank of Baroda Consortium i. Bank of Baroda ii. Punjab National Bank 1 iii. State Bank of India iv. Union Bank of India v. Asset Reconstruction Company (India) Ltd. (B). Punjab National Bank Consortium i. Punjab National Bank ii. Bank of

Baroda iii. Bank of India iv. Dena Bank v. L&T Infrastructure and Finance Company Limited.

11. Learned Senior Counsel appearing for the Appellant further submits that the assignment of the debt of the consortium of banks in favour of Respondent No. 3 is under challenge before the Hon'ble High Court of Bombay. The manner in which the auction of the debt has been done has made the whole auction doubtful and under a shadow.

12. It is further submitted that during the time period from 2021 to 2025, the corporate debtor was working alongside the banks' consortium for resolution of the debt. On 28.03.2023, the financial creditor declared the facilities granted to the CD as NPA. Subsequently, in March 2024, the corporate debtor approached the banks' consortium with a proposal for a one-time settlement so that the issue pertaining to the debt owed by the corporate debtor against all consortium members can be settled once and for all.

13. It is further submitted that, vide its letter dated 15.01.2025, the corporate debtor offered a sum of Rs. 580 crores to the consortium towards settlement of the entire debt. After various discussions with the consortium members in the joint lender forum meetings, this offer was increased from Rs. 580 crores to Rs. 590 crores and in pursuance of the aforesaid letter, the consortium members led by Bank of Baroda accepted the revised enhanced proposal of the corporate debtor for the sum of Rs. 590 crores. The Bank of Baroda issued a letter for deposit of 10% of the upfront amount on 04.10.2025.

14. It is further submitted that, on the one hand, the consortium, in a letter dated 04.10.2025, had asked the corporate debtor to deposit 10% of the OTS

offer amount, but they still sought to conduct an auction of the corporate debtor's debt via the Swiss challenge method to ARCs, banks, NBFCs, etc.

15. It is further submitted that, in response to the aforesaid letter of the Bank of Baroda dated 04.10.2025, the Appellant also issued a letter dated 04.10.2025 to the Bank of Baroda, acknowledging the condition of 10% upfront payment. However, the Bank of Baroda, on behalf of all the lenders, sent a letter dated 30.10.2025 declaring the corporate debtor as the successful bidder in terms of the Swiss challenge process run by the consortium (as the Corporate Debtor's offer of Rs. 590 crores were kept as anchor bid in the auction). The CD, however, required time for payment of the 10% upfront amount from Bank of Baroda. However, the petition has been filed by the Respondent No. 1 before the Ld. Adjudicating Authority under Section 7 of the Code to derail the OTS procedure and when the Section 7 proceedings were reserved for orders on 10.03.2026, the Bank of Baroda rejected the sanctioned OTS for non-deposit of the upfront amount on 16.04.2026. They initiated a fresh swiss challenge with 621 crores as the anchor bid by the JM Financials. The JM Financial was declared the successful bidder at ₹621 crores. However, the holding company filed its petition before the Bombay High Court challenging this Swiss challenge and also offered ₹625 crores towards complete settlement.

16. It is further submitted that subsequently, when the aforesaid offer of the holding company was rejected, the holding company offered 50% upfront with a revised proposal. However, on 06.06.2026, Respondent No. 1 rejected the said proposal. This offer was again enhanced to Rs. 631 crores, and this

Appellant Tribunal requested the COC to deliberate. However, on 18.06.2026, the COC rejected the offer, alleging that it is conditional.

17. It is vehemently submitted that respondent banks have not disputed that the revised offer of Rs. 631 crores are much higher than the accepted assignment value of Rs. 621 crores from GM Financials and the stipulations which have been termed as conditions by the respondent bench are only regulatory compliances under FEMA and RBI guidelines applicable to a foreign-owned and controlled company, and are not commercial conditions attached to the payment.

18. It is further submitted that banks have already accepted Rs. 621 crores through the Swiss challenge, and even if the CIRP continues, they cannot recover more than Rs. 621 crores, where the Appellant had offered Rs. 631 crores. Moreover, the 120 employees of the CD would be the only sufferer of the CIRP process. The Appellant is willing to pay the said debt amount and settle matter even now if given the chance before this Appellate Tribunal and comply with the directions of order dated 29.06.2026.

19. It is also submitted that the Appellant had requested the learned adjudicating authority to adjourn the case so that the debt may be resolved. However, the above order has been passed.

20. Learned Senior Counsel appearing for the respondent No. 3, J M Financial Asset Reconstruction Company Limited, submits subsequent to the Pan India advertised bid process document, the lenders executed two assignment agreements dated June 30, 2026, in favour of the Respondent No. 3 for an aggregate consideration of Rs. 621 crores. Thus, the Respondent No. 3 has stepped into the shoes of the entire consortium of lenders and presently

holds 100% of the financial debt of the corporate debtor. Thereafter, the COC has been reconstituted by the Resolution Professional.

21. It is further submitted that the law is well settled that an appeal against an order of admission under Section 7 turns only upon the existence of a financial debt and occurrence of the default. It has been admitted by the Appellant itself that the loan accounts suffered structural delays in debt servicing and were classified as NPA. Moreover, the CD's own OTS letter dated January 15, 2025, refers to its acknowledgement of debt submitted to the lenders. Thus, the debt and default have been admitted by the Appellant.

22. It is further submitted that the grounds urged in the appeal rest entirely on alleged OTS and minority status of Bank of India. The reliance placed by the Appellant on Vidarbha Industries Power Limited versus Axis Bank Limited (2022) 8 SCC 352 is misconceived, since the Supreme Court in M. Suresh Kumar Reddy versus Canara Bank (2023) 8 SCC 387 has clarified that the said decision was rendered in its peculiar facts. Once debt and default are established, the adjudicating authority is bound to admit the application under Section 7 of the Code. Reliance is also laid on ES Krishna Murthy versus Bharat High Tech Builders Private Limited (2022) 3 SCC 161 and Saurabh Junjunwala versus Pegasus Assets Reconstruction Company Private Limited (2025) 318 NCLAT CA (AT), Insolvency No. 648 of 2024, decided on May 1, 2025.

23. It is further submitted that the contention that a valid contractually binding OTS subsisted is totally misconceived. The letter dated October 20, 2025, expressly records that the offer was subject to final approval from all the consortium lenders and that the letter does not create any binding

obligations on lenders. Moreover, the OTS was accepted on a condition that a 10% upfront deposit would be deposited by the Appellant. However, no money has been deposited by the Appellant, and therefore the OTS was closed on April 16, 2026.

24. It is further submitted that the Appellant has instituted a writ petition before the Hon'ble Bombay High Court titled Sudarshan Aithal versus Bank of Baroda and others against the lenders, the process advisor, and Respondent No. 3. However, the pendency of the same has been concealed by the Appellant, while petition as well as the present appeal was verified at New Delhi on the same date, i.e., May 21, 2026.

25. It is further submitted that repeated defaults have been committed by the Appellant. At first, the lenders accepted the corporate debtor's offer of Rs. 590 crores as the base price for Swiss challenge, subject to an upfront deposit of 59 crore, which was never deposited. During the course of the proceedings pending before the NCLT, the Appellant resisted admission on the strength of the very OTS, which it failed to perform. The OTS was never honoured. Before this Appellate Tribunal on June 15, 2026, the Appellant represented that it is was ready to deposit one-half of its offer of Rs. 631 crores, however, the same was never deposited. On June 29, 2026, the Appellant recast the same offer into two instalments i.e. 50% by July 9 and the balance by July 20, 2026. Whereupon, this tribunal directed the Appellant to deposit the amounts accordingly, without prejudice to the rights of the lenders to accept or reject the proposal, but again no deposit was made on the aforesaid dates.

26. It is vehemently submitted that each of the offers of the Appellant was considered and unanimously rejected on account of the Appellant's history of

defaults and acceptance or rejection of the OTS, otherwise also, lies within the commercial wisdom of the lenders, which is non-justiciable.

27. It is further submitted that, in view of the amended Section 12A of the Code (brought into force with effect from May 26, 2026), withdrawal of an admitted application is permitted only on an application by the resolution professional, with the approval of 90% of the voting share of the COC. In this regard, a three-member bench decision of this Appellate Tribunal in **Ayush Prashant Aggarwal Versus Uma Export Limited (passed in CA (AT) Ins No. 1366 of 2026, decided on 24.08.2026**) has been relied upon, wherein it is held that the procedure for withdrawal of application for CIRP has now been made more stringent. This is because Subsection 2 of Section 12A begins with a non-obstante clause and states that an application admitted under Sections 7, 9, and 10 shall not be withdrawn prior to the constitution of the COC or after the first invitation for submission of a resolution plan has been issued by the resolution professional. Thus, when the CIRP has commenced, no settlement or payment can bring the CIRP to an end. Otherwise, the mechanism provided under the amended Section 12A of the Code.

28. It is further submitted that the object of the IBC is the resolution of the corporate debtor and not a debt recovery tool. Therefore, the appeal filed under Section 61 of the Code cannot be used as a forum for negotiating the quantum and timing of settlement and to reopen a concluded RBI-compliant public auction by relying on the price discovered therein with a deferred and unfunded offer. Reliance in this regard has been laid on **Swiss Ribbons Private Limited versus Union of India, (2019) 4 SCC 17**. It is therefore requested that the appeal is liable to be dismissed and be dismissed as such.

29. Having heard learned counsel for the parties and having perused the record, we, at the outset, notice that Learned Adjudicating Authority has considered the judgments relied on by Learned Counsel for the parties and, after considering Innoventive Industries Limited (Supra),RK Industries (Supra),HPCL Biofuels Limited (Supra),Swiss Ribbons (Supra),Pioneer Urban Land and Infrastructure Limited (Supra),Power Trust versus Bhuvan Madan and others, Civil Appeal No. 2211 of 2024, decided on 18.02.2026 by the Hon'ble Supreme Court summarized the legal position as under:

> ***"85.*** *To summarize the above judgment, we observe as under: -*
>
> ***a****. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process must be initiated. Section 3(12) defines "default" as non-payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.*
>
> ***b****. When the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor.*
>
> ***c****. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5).*

> ***d****. The Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt.*
>
> ***e****. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more.*
>
> ***86.*** *Applying the ratio of Power Trust (supra), we are of the view that the applicant has advanced a financial debt, which is in default, for an amount exceeding Rs. 1 Crore and that the Applicant has placed necessary proofs including the record of default issued by the information utility, which clearly indicates that the debt is in default and, therefore, this Application deserves to be admitted****."***

30. Thus, the Learned Adjudicating Authority, after finding the due debt and default, has ordered initiation of the CIRP against the CD.

31. We also notice that neither before the Ld. Adjudicating Authority nor before us, the debt or the default has been disputed by the Appellant. What has been agitated is that Respondent No. 1 is a minority lender having approximately 9.4% share in the debt and illegal rejection of the OTS and also illegal assignment of the debt to respondent No. 3. The Appellant has also challenged the assignment by the consortium of lenders to Respondent No. 3 before the Honourable High Court of Bombay, and the said Writ petition is stated to be pending till now.

32. Hon'ble Supreme Court in *Innoventive Industries Limited Vs. ICICI Bank and Another* (Civil Appeals Nos. 8337-38 of 2017) held as under:

> ***"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.

29. *The scheme of Section 7 stands in contrast with the scheme under Section & where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing-i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

30. *On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial*

> *creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise**."***

33. Learned Counsel for the Respondent No. 3 has also relied on ***M. Suresh Kumar Reddy Vs. Canara Bank & Others*** (2023) 8 SCC 387 in order to show that the Appellant cannot rely on the ***Vidarbha Industries Power Limited v. Axis Bank Limited*** **(2022) 8 SCC 352.** Relevant Paragraphs of the same is reproduced as under:

> ***"12.*** *Reliance is placed on the decision of this Court in Vidarbha Industries and in particular, what is held therein in paras 86 to 89 which reads thus (SCC p. 377)*
>
> > *"86. Even though Section 7(5)(a) IBC may confer discretionary power on the adjudicating authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner.*
> >
> > *87. Ordinarily, the adjudicating authority (NCLT) would have to exercise its discretion to admit an application under Section 7 IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the corporate debtor in payment of the debt, unless there are good reasons not to admit the petition.*
> >
> > *88. The adjudicating authority (NCLT) has to consider the grounds made out by the corporate debtor against admission, on its own merits. For example, when admission is opposed on the ground of existence of an award or a decree in favour of the corporate debtor, and the awarded/decretal amount exceeds the amount of the debt, the adjudicating authority would have to exercise its discretion under Section 7(5)(a) IBC to keep the admission of the application of the financial creditor in abeyance, unless there is good reason not to do so. The adjudicating authority may, for example, admit the application of the financial creditor, notwithstanding any award or decree, if the award/decretal amount is incapable of realisation. The example is only illustrative.*

> *89. In this case, the adjudicating authority (NCLT) has simply brushed aside the case of the appellant that an amount of Rs. 1730 crores was realisable by the appellant in terms of the order passed by APTEL in favour of the appellant, with the cursory observation that disputes if any between the appellant and the Electricity Regulatory Commission were inconsequential."*
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> *(emphasis supplied)*
>
> ***13.*** *A review petition was filed by Axis Bank Ltd. seeking a review of the decision of Vidarbha Industries on the ground that the attention of the Court was not invited to the case of E.S. Krishnamurthy. While disposing of review petition by order dated 22-9-2022, this Court held thus (Vidarbha Industries Power case, SCC p. 323, paras 6-7)*
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> > *6. The elucidation in para 90 and other paragraphs (of the judgment under review) were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statutes. Judicial utterances and/ or pronouncements are in the setting of the facts of a particular case.*
> >
> > *7. To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes."*
>
> ***14.*** *Thus, it was clarified by the order in review that the decision in Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in Innoventive Industries and E.S. Krishnamurthy. The view taken in Innoventive Industries still holds good."*

34. We also notice that, though the Appellant has made various OTS proposals and the same has been accepted also by the Respondent No. 1 but the Appellant has failed to deposit 10% of the amount as indicated in the reply given to the Appellant with regard to its OTS proposal. It is reflected that, while the letter dated 04.10.2025 states that the Bank of Baroda has accepted the OTS submitted by the Appellant on the condition of deposit of 10% of the upfront amount stated in the OTS settlement (i.e., Rs. 59 crores), so that other lenders can put up the proposal with their competent authority for internal

approvals. The said amount was required to be deposited by 07.10.2025. However, as per the own admission of the Appellant, this amount was never deposited. Significantly, the Bank of Baroda has written a communication to the Appellant on 16 April 2026, in which it is informed that the Appellant was advised to deposit ₹59 crores as 10% of the OTS offer amount and as the Appellant has failed to deposit the upfront amount so far, the consortium of lenders, in the JLM meeting held on 16 2026, has decided to reject and return the OTS proposal. Thus, it is evident that the upfront amount of Rs. 59 crores was not deposited by the Appellant, and therefore the lenders were not obliged to accept the OTS in the absence of any such deposition.

35. We also notice that, at the stage of Appeal also, the Appellant has made an offer that it is willing to pay Rs. 631 crores and also to deposit 50% of the total amount of Rs. 631 crores. The said offer is recorded by this Appellant Tribunal in its order dated 15th June 2026, and it was directed that the COC may deliberate upon the offer made by the Appellant. However, when this matter was taken up on 29.06.2026, it was informed that the COC has rejected the said offer as the proposal was conditional. Thereafter, the Appellant submits that the Appellant is willing to deposit the 50% of Rs. 631 crores within 10 days (by 09.07.2026) and the remaining 50% within the next 10 days (by 20.07.2026) and on the submissions made by Learned Counsel for the Appellant, this Appellant Tribunal has passed the following order:

> *4. Learned counsel for the petitioner in Sec. 7 petition, as well as the CoC, submitted that the CoC has viewed the conduct of the appellant and the manner in which he was dilly-dallying the recovery of money earlier and even after*

the commencement of CIRP. For them, it is sheer loss of trust in the appellant. Having stated thus, since the appellant is now offering ₹10 crores more than what the ARC has offered, we only require the learned counsel for the lender bank and the CoC to take instructions in the matter.

5. In the meantime, we direct the appellant to deposit 50% of Rs. 631 crores on or before 09.07.2026 as first instalment and next 50% by 20.07.2026 before Registrar NCLAT. It is underscored that this order is made without prejudice to the right of the respondents to accept or reject the proposal now made by the appellant.

36. Thus, it is crystal clear that even this offer made by the Appellant before this Appellate Tribunal recorded in order dated 29.06.2026, was not honoured and the amount which was permitted by the Appellate Tribunal on the request of Appellant was not deposited.

37. We find substance in the submissions made by the counsel for Respondent No. 3 that the Appellant is guilty of repeated defaults. First, in view of the OTS, which was treated as the base price for Swiss Challenge (Rs. 59 crore), it was not deposited by the Appellant during the course of the pendency of the Section 7 petition before the Learned Adjudicating Authority. The Appellant has enhanced its settlement amount from Rs. 590 crores to Rs. 621 crores, and it was also not honoured and lastly the commitment to deposit Rs. 631 Crore in two tranches was also not honoured.

38. We also find substance in the submissions made by learned counsel for the respondent No. 3 that any settlement or withdrawal, in view of the amended Section 12A of the Code, is now permitted only following the procedure provided therein. In this regard, the law relied on by the respondent No. 3 (i.e., Ayush Prashant Aggarwal) (supra) may be recalled, wherein it has been highlighted that the procedure for withdrawal of application for CIRP has been made more stringent by the Amendment made in Section 12A of the Code. It has also been highlighted that subsection 2 of Section 12A begins with a non-obstante clause and states that an application admitted under Sections 7, 9, and 10 shall not be withdrawn prior to the constitution of the CoC or after the first invitation for submission of a resolution plan has been issued by the Resolution Professional. Moreover, the financial creditor could not be compelled to accept the OTS proposed by the Appellant, more so when, on earlier occasions, the Appellant has not honoured the OTS and has not deposited the 10% amount of the OTS within the time stipulated.

39. In view of the above facts and circumstances, we are of the considered view that the Ld. Adjudicating Authority has not committed any mistake in admitting the application moved by the Respondent No. 1 under Section 7 of the Code. In result, the appeal lacks merits and is **dismissed** as such.

40. There is no order as to cost. The pending IA, if any, is also disposed of.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi
06.11.2026
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