

NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH COURT VI

Item No. P-1 & P-2
IA (I.B.C) 5338/MB/2025
in
C.P. (IB)/522/MB/2025
&
C.P. (IB)/522/MB/2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **11.06.2026**

NAME OF THE PARTIES: **The Canara Bank Limited**

Vs.

HK Toll Road Private Limited

Under Section 65 r/w 60(5) & 7 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, *vide* separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//AS//

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/522/MB/2025

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

THE CANARA BANK LIMITED

[PAN No.: AAACC6106G]

Stressed Asset Management Branch:

Circle Office Building

C-14, G-Block, Bandra-Kurla Complex

Bandra (East), Mumbai – 400051.

...Financial Creditor

V/s

HK TOLL ROAD PRIVATE LIMITED

[CIN No.: U45203MH2010PTC203370]

H Block, 1st Floor, Dhirubhai Ambani Knowledge City

Navi Mumbai – 400710

Also having Office at:-

Reliance Centre, 19, Walchand Hirachand Marg

Ballard Estate, Mumbai – 400001.

...Corporate Debtor

IA (I.B.C) 5338/MB/2025

in

CP (IB) No. 522/MB/2025

[Under Section 65 r/w 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016]

HK TOLL ROAD PRIVATE LIMITED

... Applicant/CD

V/s

THE CANARA BANK LIMITED

... Respondent/FC

Pronounced: 11.06.2026

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For FC: Adv. Yash Dhruva, Adv. Niyati Merchant i/b MDP Legal

For CD: Adv. Rohit Gupta a/w Adv. Kartik Hede & Adv. Bhakti Chandan i/b Mulla
& Mulla and CBC

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This C.P. (IB) No. 522 of 2025 (Application) was filed by Canara Bank, the Financial Creditor (FC) having PAN No.: AAACC6106G, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against HK Toll Road Private Limited, the Corporate Debtor (CD), having CIN No.: U45203MH2010PTC203370.

1.2 This Application has been affirmed by one Mrs. Waruni Sinha (Staff No.109177), Manager of Canara Bank SAM Branch Mumbai. As per Part IV of the Application, the amount claimed to be in default is Rs. 282,59,57,619.45/- (Rupees Two hundred Eighty-Two Crore Fifty-Nine Lakh Fifty-Seven Thousand Six Hundred Nineteen and Forty-five paise

only) as on 28.02.2025, out of which principal amount is Rs.234,22,72,778/- and interest amounts to Rs.48,36,84,841.45/-. The date of default is stated as 31.12.2023 and CD's account was classified as NPA on 30.03.2024.

1.3 The Applicant has proposed Mr. Sanjay Kumar Mishra, having Registration No. IBBI/IPA-001/IP-P01047/2017-18/11730, to act as the Interim Resolution Professional (IRP), in case the Application is admitted.

2. CONTENTIONS OF FC

2.1 The CD is promoted by Reliance Infrastructure Ltd. and was incorporated as a special purpose vehicle company with the main object to implement a project that means the construction, operation, maintenance, strengthening and widening of existing 59.87km stretch (from km 33.130 to km 93.00) of Hosur- Kishnagiri road on NH - 7, in the state of Tamil Nadu from existing four lanes to six lanes on DBFOT (Design, Built, Finance, Operate and Transfer) basis and shall include collection of Fees from the Existing Four lanes, in accordance with the provisions of Concession Agreement dated 2nd July 2010 ("the highway project").

2.2 The National Highway Authority of India ("NHAI") had shortlisted and selected Reliance Infrastructures Ltd. to implement the highway project and also issued Letter of Acceptance dated 13.05.2010.

2.3 The CD estimated the cost of development and implementation of the Project at Rs.925.44 crores, which the CD proposed to fund with a debt Equity ratio of 1.50:1. Accordingly. Term Loan Component was estimated at Rs.555.26 crores with Promoter's contribution of Rs.370.18 crores.

2.4 The CD approached the financial creditor along with other lenders for the purpose of part financing the project. The FC, considering the request of the Corporate Debtor, along with other lenders, sanctioned Term Loan facilities (“credit facilities”) of Rs. 555 Crores on the terms and conditions as per the sanction letters issued by the lenders, including the financial creditor with its exposure of Rs.310 crores.

2.5 Pursuant to the grant of the said credit facilities, the financial creditor and other lenders collectively formed a consortium of lenders led by the financial creditor known as “Canara Bank Consortium”.

2.6 In order to secure the said credit facilities, the Canara Bank Consortium executed the following security documents on 17.02.2012:

- a) Common Rupee Term Loan Agreement.
- b) Security Trustee Agreement.
- c) Escrow Agreement
- d) Supplementary Escrow Agreement
- e) Facility Agent Agreement
- f) Inter Creditor Agreement
- g) Letter of Comfort
- h) Irrevocable Power of Attorney

2.7 The CD along with other lenders also executed the following security documents dated 03.10.2012:

- a) First Amendment Agreement to Common Rupee Loan Agreement
- b) First Amendment Agreement to Security Trustee Agreement
- c) Addendum Deed to the Deed of Sponsor Support
- d) First Amendment Agreement to Supplementary Escrow Agreement

- e) Escrow Agreement dated 11.10.2012;
- f) Substitution Agreement dated 11.10.2012;

2.8 Further, to secure the credit facilities by Canara bank consortium, the CD executed the Registered Indenture of Mortgage dated 05.11.2012, creating mortgage upon flat no. A/01 Ground Floor, A wing, Sai Shanti Building no. 2, Saibaba Nagar, Katkarpada road, Boisar West, Taluka Palghar, District Thane.

2.9 The CD has issued Revival Letters dated 26.11.2019 and 28.11.2023 to the financial creditor acknowledging the execution of loan and security documents in respect of the credit facilities

2.10 The Highway project had achieved provisional Commercial Operation Date on 05.04.2016 and CD had been meeting all its repayment obligations till August 2023. The Corporate Debtor stated that as against the targeted toll revenue of Rs.249 Crore for FY 2023- 24, the debt servicing obligations aggregate Rs.163 crore [Principal - Rs.111 crore & Interest - Rs.52 crore] and capex, premium payment to NHAI at Rs.204 Crore. Even after accounting for the opening cash balance and DSRA, there will be sizeable deficit in the cash-flows. It shows the current cash flows of the corporate debtor were not adequate to honor the obligations of the financial creditor and other lenders and NHAI.

2.11 In the meantime, NHAI also issued notice of intention to terminate to CD on 12th May 2023. In view of the above, CD submitted its proposal for restructuring and sought for reduction in the rate of interest and deferment of the principal instalments matching with the cash flows.

2.12 Further, in the consortium meeting held on 19th July 2023, all member Banks including financial creditor gave their consent for restructuring of corporate debtor's account. Accordingly, the debt restructuring undertaken by lenders including financial creditor was appraised to NHAI, the consortium lenders including financial creditor requested NHAI to provide consent for restructuring and also to extend the aforesaid period of 180 days by such further period not exceeding 90 days to explore the possibility of restructuring/ substitution. However, NHAI, never consented for the same.

2.13 Since, the restructuring proposal was not viable, the financial creditor vide their letter dated 18th January 2024 appraised NHAI and sought appointment to discuss on further course of action including substitution option. However, NHAI issued Termination orders to the corporate debtor on 22nd January 2024.

2.14 Further, in response of the termination issued by NHAI, the CD filed Petition in the High Court of Delhi (32/2024) for interim measure for protection and the Hon'ble Delhi High Court vide Order dated 25th January 2024 ordered the parties therein to request the Arbitral Tribunal to take up the application under Section 17 of the Act as expeditiously as possible and the CD will be at liberty to use the amounts lying in the escrow account (Account No.: 1903201010136, IFSC: CNRB0001903, MICR: 400015102 in with the financial creditor) only for the purposes of payment of salaries to its employees and servicing the monthly interest component of the debt in respect of the highway project.

2.15 As per the Hon'ble High Court Orders dated 25.01.2024, the financial creditor appropriated the amount lying in the Escrow/ DSRA Account to the

consortium lenders as per their sharing pattern and for employee salaries. Further, the Consortium lenders demanded NHAI on 14.02.2024 to make the payment of the outstanding dues as the present cash flows were sufficient to make such payments. However, NHAI refused to pay the consortium lenders, including financial creditor dues vide their letter dated 08.03.2024.

2.16 In the meantime, NHAI shifted the Toll Collection (Escrow Account) to another bank without informing the financial creditor and other lenders under the consortium. Subsequently, the Account of the Corporate Debtor slipped to Non-performing Asset ("NPA") with the financial creditor due to non-servicing of the principal amount.

2.17 Since the CD committed default in its payment obligations, the account was classified as NPA on 30.03.2024.

2.18 The financial creditor, through its Recall Notice dated 18.04.2024, has recorded some of the aforesaid facts and called upon the CD to pay the entire outstanding amount.

2.19 Despite various reminders to the CD, it has failed to pay the outstanding dues and repeatedly defaulted in complying with the terms of the sanction of credit facilities availed.

2.20 The dates of disbursement of the above-said credit facilities are as under:-

Date	Account	Amount
31.10.2012	1903773000119	726200000
02.01.2013	1903773000119	275900000
12.03.2013	1903773000119	340700000
28.05.2013	1903773000119	180000000
16.07.2013	1903773000119	206300000
18.09.2013	1903773000119	134000000
08.10.2013	1903773000119	335200000
07.01.2014	1903773000119	123500000
10.04.2014	1903773000119	122900000
25.08.2014	1903773000119	78200000
26.11.2014	1903773000119	44700000
23.03.2015	1903773000119	139700000
27.04.2015	1903773000119	83800000
04.06.2015	1903773000119	91900000
01.07.2014	1903773000119	107200000
01.07.2015	1903773000119	100000000

2.21 The Applicant has attached the following supporting documents along with the Application:

- a) Copy of the letter of authority along with delegation of power/authorizing Ms. Waruni Sinha, the authorized representative of the Financial Creditor to file/sign this petition.
- b) Copy of the Sanction letter dated 14.03.2011 from the Applicant.
- c) Copy of the Common Rupee Loan Agreement dated 17.02.2012 executed by Canara Bank Consortium.
- d) Copy of the Security Trustee Agreement dated 17.02.2012 executed by Canara Bank Consortium.

- e) Copy of the Escrow Agreement dated 17.02.2012 executed by Canara Bank Consortium.
- f) Copy of the Supplementary Escrow Agreement dated 17.02.2012 executed by Canara Bank Consortium.
- g) Copy of the Facility Agent Agreement dated 17.02.2012 executed by Canara Bank Consortium.
- h) Copy of the Inter Creditor Agreement dated 17.02.2012 executed by Canara Bank Consortium.
- i) Copy of the Letter of Comfort dated 17.02.2012 executed by Canara Bank Consortium.
- j) Copy of the Irrevocable Power of Attorney dated 17.02.2012 executed by the Consortium.
- k) Copy of the First Amendment Agreement dated 03.10.2012 to Common Rupee Loan Agreement.
- l) Copy of the Registered Indenture of Mortgage dated 05.11.2012.
- m) Copy of the Revival Letters dated 26.11.2019 and 28.11.2023 issued by Corporate Debtor to Financial Creditor acknowledging the execution of loan and security documents in respect of the credit facilities.
- n) Copy of the Recall Notice dated 18.04.2024 from the Financial Creditor to the CD.
- o) Details specifying date of default, default amount with the applicable interest.
- p) Copy of the NeSL Report.
- q) Copy of the CIBIL Report.

- r) Copies of the entries in the Bankers Book/ Statement of accounts along with Banker's Book Evidence certificate.
- s) Copy of the written communication of the IRP along with validity certificate.

3. CONTENTIONS OF CD

3.1 Affidavit-in-Reply dated 25.06.2025 was filed and affirmed by one Mr. Tarun Bhowmick, who is stated to be the authorized representative of the CD.

3.2 Before dealing with the Petition on merits, the CD has set out a brief background about its operations and functioning and events which led to it facing the present '*temporary financial crunch*'.

3.3 By and under a Concession Agreement dated 02.07.2010 ("CA"), the National Highways Authority of India ("NHAI") awarded a contract to the Corporate Debtor for construction, operations and maintenance works and further six-laning of Hosur-Krishnagiri section of National Highway No. 7 ("NH-7", and is presently NH-44) for the stretch from KM 33.130 to KM 93.000 (approximately 59.87 km in length) in the state of Tamil Nadu ("Project Highway") on Design, Build, Finance, Operate and Transfer ("DBFOT") pattern under the National Highways Development Project ("NHDP Phase-V") scheme, for a period of 24 years ("Project"), commencing from the appointed date i.e., 07.06.2011. Thus, the concession period in terms of the CA is upto 06.06.2035.

3.4 A further Supplementary Agreement also came to be executed between NHAI and the CD on 17.06.2014 ("Supplementary Agreement") in relation to deferment of premium payable by NHAI.

3.5 The estimated project cost was evaluated at approximately Rs. 925.44 crore and the same was agreed to be funded in a debt-to-equity ratio of 1.50:1 by the CD's Promoter Company and a consortium of lenders. The Promoter Company of the CD agreed to infuse a sum of Rs. 370.18 crore, while the consortium funded the Project to the tune of Rs. 555.26 crore, of which the exposure of the Financial Creditor was for a sum of Rs. 310 crore.

3.6 The financial facilities sanctioned by the consortium of lenders led by the Financial Creditor alongwith the current ratio of the Lender's individual share in the consortium, are as under –

Sr. No.	Lender	Total Amt. sanctioned (Rs. in Cr.)	Share in the consortium
1.	Canara Bank	310	56%
2.	Punjab National Bank	145	26%
3.	Union Bank of India	50	9%
4.	State Bank of India	50	9%
	TOTAL	555	100%

3.7 The Provisional Commercial Operation Date of the Project Highway was achieved on 05.04.2016, i.e., the Project was completed by the Corporate Debtor on that date. The Independent Engineer ("IE") issued the Provisional Completion Certificate ("PCC") on 05.04.2016 for a length of

59.87 kms, being the total Project length, in favour of the CD for commercial service of the Project to the highway users in terms of the CA. Thus, the Project Highway was provisionally declared fit for issuance of a PCC by the IE.

3.8 Much prior to the issuance of the Intention to Terminate Notice by NHAI, the Corporate Debtor had already issued a Notice of Dispute to NHAI.

3.9 In response to the IOT Notice, the Financial Creditor, by its reply letter dated 26.05.2023, informed NHAI that a meeting of the Consortium of Lenders was conducted wherein the Lenders agreed to explore all possible options including exercising the right to substitution. By the said letter, the Financial Creditor requested NHAI's appointment for discussions.

3.10 The CD, ultimately, was left with no other choice but proceeded to invoke arbitration under Clause 44.3 of the CA by its Notice of invocation of Arbitration dated 08.08.2023 ("NIA Notice"). NHAI issued a letter dated 01.09.2023 to their nominee arbitrator for acceptance as a Co-Arbitrator.

3.11 While appointment of Ld. Presiding Arbitrator by both the nominee arbitrators was pending, NHAI on 22.01.2024 issued a Termination Order ("Termination Notice") by exercising its rights under Clause 37.1.2 of the CA and terminating the CA with immediate effect by taking over the entire operations of the Project and setting up their own vendors/contractors.

3.12 Aggrieved, the Corporate Debtor filed a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("A&C Act") before the Hon'ble Delhi High Court. In terms of an order dated 25.01.2024, Hon'ble Delhi High Court disposed of the said Section 9 Petition, with a direction that the same shall be treated as an application under Section 17 of the A&C Act before

the Arbitral Tribunal, once constituted. By the said order, the Hon'ble Delhi High Court further granted an interim relief to the Corporate Debtor till an order is passed by the Arbitral Tribunal in the Section 17 application, to utilise the funds lying in the escrow account for the purposes of payments of salaries to its employees and for servicing monthly interest debt component of the debt in respect of the Project.

- 3.13 A three-member Arbitral Tribunal comprising of retired judges of the Hon'ble Supreme Court namely, Hon'ble Justice (Retd.) Mr. Sanjay Kishan Kaul as the Presiding Arbitrator, Hon'ble Justice (Retd.) Mr. Deepak Gupta and Hon'ble Justice (Retd.) Mr. Dinesh Maheshwari [now being substituted by Hon'ble Justice (Retd.) Mr. S. J. Mukhopadhaya] as the Co-Arbitrators, came to be constituted on 29.01 .2024 to adjudicate the disputes between the Corporate Debtor and NHAI.
- 3.14 By an order dated 08.08.2024 passed in the Section 17 Application by the Arbitral Tribunal, the impugned Termination Notice was stayed till the final determination of the arbitration proceedings.
- 3.15 In fact, it is of significance importance to mention here that while passing the said order in the Section 17 Application, the Ld. Arbitral Tribunal has specifically observed that the continuity of such infrastructure projects is of importance, especially in the present case where the Corporate Debtor has completed the construction works and Project has become financially viable for the stake holders. The relevant extracts of the observations made by the Ld. Arbitral Tribunal in the Section 17 Order are reproduced herein below :-

"23. It also weighs with the Tribunal that termination of the CA has taken place at the stage when the Project was becoming financially viable and all stakeholders were about to realise the benefits of the endeavour. Termination would also result in total loss of equity & sub-debt contributions of the promoters, to the extent that the Claimant would be placed in a financially precarious situation. **Further, there is substantial element of public money involved by way of loans advanced by banks, which can only be repaid from toll collection being placed in the Escrow Account in accordance with the terms of the CA.**

...

26. **It commends to the Tribunal that equities lie in favour of the Claimant and HKTR has made out a prima facie case in its favour for staying the Termination Notice issued by NHAI, subject to the outcome of the present arbitral proceedings. The balance of convenience also lies with the Claimant. The Tribunal notes that projects of this nature have to be dealt with keeping in mind the practicalities of execution of the nature of work. Significant**

investments made by a concessionaire, in this case the Claimant, only reaps returns at a later stage after construction is completed and the concessionaire starts collecting toll.

...

28. The Tribunal further notes that continuity in such projects is of importance, especially in the present case where the Claimant has completed construction works and the Project was becoming financially viable for all its stakeholders, including lenders. Moreover, as also noted above, this is not a case where the Claimant has completely abandoned work and/or operational issues raised were never rectified. A balance ought to be struck to protect interests of the lenders and the parties to the dispute till such time that a final view is taken by this Tribunal. For all the foregoing reasons & in view of the legal position holding the field and given that the concerns raised by the Tribunal qua the financial wherewithal of the Claimant to execute Stage Construction Works stands addressed, this Tribunal issues the following directions:

28.1. The operation of the Termination Notice bearing No. NHAI/HQ/TN Div./HK/E-175436

dated 22.01.2024 issued by the Respondent is stayed till final determination in the present arbitral proceedings or till such further orders as maybe passed by the Tribunal;

28.2. The toll collected from the users of the Highway shall be deposited in the Escrow Account maintained by the parties.

28.3. The Claimant will execute the balance Stage Construction Works and complete the same expeditiously.

28.4. The security furnished by the Claimant by way of demand drafts will be put in a non-lien account within 2 weeks from the date of this Order which would remain under the directions of the Tribunal." (emphasis supplied)

3.16 It is respectfully submitted that the Ld. Arbitral Tribunal after detailed consideration of the facts and material on record, has categorically observed and recorded that the Project was becoming operationally and financially viable and its continuation is essential and imperative to protect the interests of stakeholders, including Financial Creditor. The Arbitral Tribunal further specifically held that the Project was not abandoned by the Corporate Debtor, and defects, if any, were also being remedied by the Corporate Debtor.

3.17 The Arbitral Tribunal further recorded that the termination of the Project by NHAI was effected at a stage when the Project was stabilizing, both

operationally and financially, and that such premature termination would cause significant financial prejudice to the Corporate Debtor as well as the Lenders. It was observed that termination would result in complete erosion of the promoters' equity and sub-debt contributions and would jeopardize the recovery of substantial public money advanced by the consortium of Lenders, which is recoverable only from the toll collections credited to the Escrow Account. The Arbitral Tribunal accordingly recognised and acknowledged that continuity of the Project was in the interest of all stakeholders, including the Lenders, and essential to preserve the financial and commercial substratum of the arrangement and to ensure that the rights and interests of the stakeholders remain protected pending final adjudication of the arbitral proceedings; thus, a balance needed to be maintained until the final adjudication of the disputes.

- 3.18 The said order was assailed by NHAI, and an appeal under Section 37 of the A&C Act was filed by NHAI before the Hon'ble Delhi High Court. By a judgment dated 17.04.2025, the said interim order was set aside by the Hon'ble Delhi High Court. The CD states that by the said judgment of the Hon'ble Delhi High Court, it has exceeded the narrowly prescribed scope of judicial review under Section 37 of the A&C Act.
- 3.19 Aggrieved, the Corporate Debtor preferred an appeal by the way of a Special Leave Petition before the Hon'ble Supreme Court of India challenging the impugned judgment dated 17.04.2025 passed by the Hon'ble Delhi High Court in Section 37 Appeal, which is currently pending for consideration.

- 3.20 In the interim, it is imperative and in the interest of justice that no adverse orders are passed against the CD. Passing an order admitting the Corporate Debtor into CIRP at this juncture would serve no constructive purpose, particularly when substantial receivables from government entities are due, and the CD is actively pursuing legal remedies for the recovery of its legitimate claims. The objective of the Code is not to penalise solvent entities facing temporary financial stress but to facilitate their revival as going concerns, thereby safeguarding broader public interest. It is pertinent to note that an order of admission under the Code operates in rem and carries far-reaching consequences.
- 3.21 In view of the aforesaid, it is most humbly requested that the outcome of the aforesaid pending proceedings be awaited, and no orders prejudicial to the interest of the Corporate Debtor, impacting its affairs, be passed in the meantime.
- 3.22 In a lenders' meeting held on 06.06.2022, the issue of restructuring was first discussed and was subsequently taken up in various other meetings of the lenders in the intervening period, wherein restructuring of outstanding debt under the existing RBI guidelines relating to "Prudential Framework for Resolution of Stressed Assets" dated 07.06.2019 was coined. In continuation of the above and having regard to the discussions held in the Consortium meeting on 26.05.2023, the Corporate Debtor *inter-alia* submitted a proposal envisaging (i) reduction in interest rate and (ii) re-alignment of principal payments in line with the projected cashflows of the project for consideration and approval of the lenders to the project.

- 3.23 Pursuant to the IOT Notice issued by NHAI, the Corporate Debtor on 31.05.2023 submitted its proposal for restructuring and sought for reduction in the rate of interest and deferment of the principal instalments matching with the cashflows ("**Restructuring Proposal**").
- 3.24 In a meeting of the Consortium of Lenders was held on 19.07.2023 wherein all the Lenders agreed and granted their consent for restructuring of the Corporate Debtor's account.
- 3.25 The Lenders, accordingly, informed NHAI about the aforesaid restructuring measures proposed to be undertaken by the Lenders and requested for NHAI's consent for the restructuring and also sought an extension of time for completion of restructuring measures / substitution from proposed 180 days by a further period not exceeding 90 days, by a letter dated 25.10.2023 addressed by the Financial Creditor. However, no response was received from NHAI.
- 3.26 The Financial Creditor, by a letter dated 18.01.2024 informed NHAI *inter-alia* that the option of substitution is being explored. The Financial Creditor further requested NHAI for an appointment to discuss on the further course of action.
- 3.27 The Financial Creditor by a subsequent letter dated 16.02.2024 addressed to NHAI, vehemently criticised the unilateral termination of the Project without prior consultation with the Lenders and further emphasized on the ongoing financial viability of the Project after specifically asserting that the Corporate Debtor had been diligently meeting its debt service obligations and was on track to settle all dues owed to both, the Lenders as well as NHAI, through toll collection by the end of the concession period.

- 3.28 The CD still continues to be engaged in further discussions with the Lenders to resolve the issue amicably at the earliest by keeping in mind the best interests of the Lenders and to ensure speedy repayment of the outstanding dues.
- 3.29 The CD is in present predicament for no fault of its own, but on account various external factors not attributable to it.
- 3.30 Since the commencement of toll operations in June 2011, the Project has consistently generated revenue through user fee (toll) collection. As of date, approximately 14 years of the concession period have elapsed, and a balance period of 10 years remains, offering significant commercial value and cash flow potential.
- 3.31 The Project attained commercial operations upon the issuance of the Provisional Completion Certificate ("PCC") on 05.04.2016. From that point onwards, uninterrupted tolling operations were carried out by the Corporate Debtor until the abrupt and unlawful termination of the Concession Agreement by NHA on 22.01.2024. The Project remained operational without default in performance or revenue collection until such termination, which fact is also admitted by the Financial Creditor in para 10 of the Petition.
- 3.32 Notwithstanding the ongoing and substantial revenue generation from the Project, the Financial Creditors have not received any repayments since the termination, solely due to the Corporate Debtor being dispossessed of operational control. This discontinuity has materially impaired the servicing of debts. Upon reinstatement of the Corporate Debtor as the rightful Concessionaire, the toll revenues will once again be applied, in accordance

with the Escrow Agreement and financing documents, towards meeting operational costs, statutory obligations, and thereafter towards servicing outstanding debt.

3.33 In furtherance of the financing documents, an Escrow Agreement was executed between the Corporate Debtor, the Financial Creditor herein as the Lenders Representative and as the Escrow Bank and NHAI in February 2012. The Escrow Agreement governs the routing, appropriation, and disbursement of all Project-related cash flows during the subsistence of the Concession.

3.34 Clause 4 of the Escrow Agreement specifically sets out the priority of disbursements from the Escrow Account during the concession period. As per the agreed waterfall mechanism, withdrawals from the Escrow Account during the concession period were required to be made by the Escrow Bank at the beginning of every month and such sums were agreed to be appropriated in the following order of priority:-

“(a) all taxes due and payable by the Concessionaire for and in respect of the Project Highway;

(b) all payments relating to construction of the Project Highway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreement;

(d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such

expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;

(e) Concession Fee due and payable to the Authority;

(f) monthly proportionate provision of Debt Service due in an Accounting Year;

(g) Premium due and payable to the Authority;

(h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including repayment of Revenue Shortfall Loan;

(i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;

(j) any reserve requirements set forth in the Financing Agreements, and

(k) balance, if any, in accordance with the instructions of the Concessionaire.”

3.35 The Escrow Agreement also stipulates that, prior to the achievement of Financial Close, no withdrawals from the Escrow Account shall be permitted except towards payment of statutory taxes, Concession Fee, and O&M expenses, strictly in accordance with the terms of the Concession and Financing Agreements.

- 3.36 Simultaneously with the execution of the Escrow Agreement, a Supplementary Escrow Agreement of even date was also entered into among the parties, further elaborating the terms governing cash flow management under the Project. The Corporate debtor craves leave of this Hon'ble Tribunal to refer to and rely upon a copy of the Supplementary Escrow Agreement dated 17.02.2012, as and when produced.
- 3.37 The existence and consistent operation of the Escrow mechanism as contemplated under the Escrow Agreement evidences a robust financial and operational framework for managing Project revenues and meeting debt service obligations. The waterfall structure, duly consented to by the Financial Creditor and NHAI, ensured that toll revenues were transparently and mandatorily appropriated toward statutory dues, operational expenses, debt servicing, and concession obligations, leaving no discretion to the CD for diversion or misapplication of funds.
- 3.38 The enforcement of such an escrow-based structure, coupled with the demonstrated record of toll collections and debt repayments, as detailed hereinabove, completely negates any presumption of financial indiscipline or inability to service debt. The alleged "**default**", if any, is not attributable to the conduct or capacity of the CD, but rather arises from the unilateral and contested termination of the Concession Agreement by NHAI, which interrupted the very revenue stream contractually earmarked for servicing the debt.
- 3.39 Accordingly, in view of the absence of a default in the manner contemplated under Section 3(12) of the IBC, and considering the structured nature of

the Project's financial arrangements, the present proceeding under Section 7 is not maintainable in law and is liable to be dismissed at the threshold.

3.40 The CD is a solvent company, which is experiencing a temporary financial crunch inasmuch as it awaits receipt of huge amounts of monies from government owned entities, on account of the wrongful termination of its contract.

3.41 In the arbitration proceedings, in alternative to seeking a declaration for the specific performance of the CA, the Corporate Debtor has quantified its claim towards Termination Payment for a sum of Rs. 709.43 crore in terms of Clause 37.3.2 of the CA which envisages '*Termination Payment*' to be paid by NHAI in the event of termination of CA due to NHAI's default and/or for a sum of Rs. 584.16 crore in terms of Clause 37.3.1 of the CA which envisages '*Termination Payment*' to be paid by NHAI in the event of termination of CA due to Concessionaire's default.

3.42 The CD has attached the following supporting documents along with the Reply:

- a) Copy of CD's Notice of Dispute dated 16.12.2022.
- b) Copy of the FC's letter dated 26.05.2023.
- c) Copy of the CD's letter dated 08.08.2023 .
- d) Copy of the NHAI's letter dated 01.09.2023 .
- e) Copy of the NHAI's Termination Notice dated 22.01.2024.
- f) Copy of the order dated 08.08.2024 passed by the Arbitral Tribunal in Section 17 Application filed by the CD.
- g) Copy of judgment dated 17.04.2025 passed in Section 37 Appeal.

- h) Copy of the order dated 02.05.2025 passed by the Hon'ble Supreme Court in SLP(C) No. 11501/2025.
- i) Copy of the restructuring proposal dated 31.05.2023 submitted by the CD.
- j) Copy of the Minutes of Meeting dated 19.07.2023.
- k) Copy of the FC's letters dated 25.10.2023, 18.01.2024 and 16.02.2024.
- l) Copy of Escrow Agreement dated 17.02.2012.
- m) Copy of the judgment dated 12.07.2022 passed by the Hon'ble Supreme Court in Civil Appeal No. 4633 of 2021.
- n) Copy of the order dated 23.04.2025 passed by Hon'ble NCL T, Bengaluru bench in Mis. Next Education India Private Limited vs Mis. KI2 Techno Services Private Limited.
- o) Copies of orders dated 24.11.2023, 04.01.2024 and 16.02.2024 passed by this Hon'ble Tribunal in Company Petition (IB) No. 337(MB) of 2023.

4. IA/5338/(MB)2025

4.1 The present Interlocutory Application (I.A.) bearing IA/5338/(MB)2025 was filed on 15.10.2025 by the Applicant, H.K. Toll Road Private Limited (which is the Respondent in C.P. 522/2025), under Section 65 r/w 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC"), seeking the following reliefs: -

*“(a) That the Hon'ble Tribunal be pleased to adjudge
and declare that the Respondent / Financial Creditor,*

Canara Bank, has filed the captioned Company Petition, being Company Petition (IB) No. 522 of 2025 maliciously;

(b) That the Hon'ble Tribunal be pleased to dismiss the captioned Company Petition, being Company Petition (IB) No. 522 of 2025;

(c) That the Hon'ble Tribunal be pleased to impose a penalty of Rs. 1,00,00,000/- (Rupees One Crore Only) on the Respondent / Financial Creditor for maliciously filing the captioned Company Petition;

(d) That this Hon'ble Tribunal be pleased to sine die adjourn the hearing of the Company Petition till the final hearing and disposal of the SLP (Civil) No. 11501 of 2025 filed by the Applicant before the Hon'ble Supreme Court of India.

(e) That pending hearing and final disposal of the captioned Interlocutory Application, the Hon 'ble Tribunal be pleased to defer the hearing of the captioned Company Petition;

(f) For ad-interim reliefs in terms of prayer clause (d);

(g) For costs of this Application;

(h) For such other and further reliefs and this Hon'ble Tribunal may, in the facts and circumstances of the case, be pleased to grant.”

CD'S CONTENTIONS

1. It is submitted that the contents of the CD's Reply to the Company Petition, its Additional Affidavits dated 4th August 2025 and 3rd September 2025, and its Affidavit in Reply dated 8th October 2025 (to the Respondent's Additional Affidavit dated 29th September 2025) be deemed to be incorporated herein as if set out *in seriatim*.
2. The CD submits that the peculiar facts in this matter warrant special consideration by the Hon'ble Tribunal, insofar as the purported default alleged by the FC has taken place solely due to factors which are not attributable to the CD, and are entirely external. In fact, it is an admitted position that the CD diligently furnished its debt on a timely basis until factors completely beyond the control of the CD prevented its ability to do so. Furthermore, it is the FC's own admitted position in the Company Petition as also in correspondence that the alleged default is solely attributable to the *mala fide* action of NHAI, including its unilateral action to illegally terminate the Concession Agreement (CA) between NHAI and the CD.
3. The CD *sans* the CA surviving and without the right to collect toll has 'nil' operations, and there is practically no resolution that can be achieved except liquidation and jeopardizing the entire probability of revival of the CD. Furthermore, the entire action of the FC will jeopardise any possibility of seeking redress of the wrong and illegal actions of NHAI, which is currently pending adjudication before the Hon'ble Supreme Court and ongoing arbitration proceedings.
4. In the instant case, the CD is a special purpose vehicle, whose sole asset was a concession granted to it by the NHAI in respect of a toll project under a Concession Agreement dated 02.07.2010 ("CA").

5. However, in view of the illegal, wrongful and premature termination of the said CA, the CD was deprived of its rightful share of the proceeds from the toll revenue, due to which it could not continue furnishing its debt in a timely manner. Presently, submitting the CD through the rigours of CIRP serves no purpose, save and except to recover the FC's amounts; in fact, the CD has no tangible asset, except the on-going litigation and arbitration proceedings against NHAI before the Hon'ble Supreme Court and the Learned Arbitral Tribunal, respectively. In view of this, it is submitted that the captioned Petition is filed maliciously, and fails to meet the purpose of maintaining the Applicant as a going-concern.

6. The facts material to this Application are set out below:-

6.1 By and under a Concession Agreement dated 02.07.2010 ("CA"), NHAI awarded a contract to the Applicant for construction, operations and maintenance works and further six-laning of Hosur-Krishnagiri section of National Highway No. 7 ("NH-7", and is presently NH-44) for the stretch from KM 33.130 to KM 93.000 (approximately 59.87 km in length) in the state of Tamil Nadu ("Project Highway") on Design, Build, Finance, Operate and Transfer ("DBFOT") pattern under the National Highways Development Project ("NHDP Phase-V") scheme, for a period of 24 years ("Project"), commencing from the appointed date -i.e., 07.06.2011 . Thus, the concession period in terms of the CA is up to 06.06.2035.

6.2 A further Supplementary Agreement also came to be executed between NHAI and the Applicant, on 17.06.2014 ("Supplementary Agreement") in relation to deferment of premium payable by NHAI.

6.3 The estimated project cost was evaluated at approximately Rs. 925 .44 crores and the same was agreed to be funded upon in a debt-to-equity ratio of 1.50:

1 by the CD's Promoter Company and a consortium of lenders. The Promoter Company of the CD agreed to infuse a sum of Rs. 370.18 crores, while the consortium funded the Project to the tune of Rs. 555.26 crores, of which, the exposure of the FC was for a sum of Rs. 310 crores.

6.4 The revenues generated by the Project were, under an Escrow Agreement dated 11.10.2012 (*Exhibit - S to the CP*), deposited into an escrow account, with the FC being the Escrow Agent.

6.5 Since the commencement of tolling operations, the Project generated revenue aggregating to approximately Rs. 1,847 crores, of which Rs. 780 crores have been appropriated solely towards servicing the Applicant's debt obligations through the escrow account mechanism. In fact, the Project has yielded revenues of Rs. 245 crores in F.Y. 2024-2025 alone, demonstrating a strong and stable inflow of revenue that would have continued to service the Applicant's debt obligations.

6.6 In view of certain disputes arising between the CD and NHAI, relating, primarily, to alleged breaches of maintenance obligations and alleged differential payment of deferred premium, the CD was compelled to invoke the dispute resolution mechanism under the CA by issuing a Notice of Dispute dated 16.12.2022 (*Exhibit – A to the Reply to the CP*).

6.7 However, during the pendency of the aforesaid dispute resolution process, NHAI, on 12.05.2023, issued a Notice under Clause 37.1.2 of the CA to the Applicant, being Intention to Termination Notice ("IOT Notice"), with a copy marked to the Lenders Representative i.e., the FC, stating that the said notice may be treated as a Notice under Clause 37.1.3 of the CA read with Clause of the Substitution Agreement dated 01.02.2012 ("Substitution Agreement").

- 6.8 In response to the IOT Notice, the Respondent by its reply letter dated 26.05.2023 (*Exhibit - B to the Reply to the CP*), informed NHAI that a meeting of the Consortium of Lenders was conducted wherein the Lenders agreed to explore all possible options including exercising the right to substitution. By the said letter, the FC requested NHAI's appointment for discussions.
- 6.9 The CD was therefore compelled to invoke arbitration under Clause 44.3 of the CA by its Notice of invocation of Arbitration dated 08.08.2023 ("NIA Notice") (*Exhibit - C to the Reply to the CP*). NHAI issued a letter dated 01.09.2023 (*Exhibit - D to the Reply to the CP*) to their nominee arbitrator for acceptance as a Co-Arbitrator.
- 6.10 However, in spite of the fact that both Parties had agreed to refer their disputes to arbitration in good faith, while the appointment of the Presiding Arbitrator by both the nominee arbitrators was pending, NHAI on 22.01.2024 issued a Termination Order ("Termination Notice") (*Exhibit - E to the Reply to the CP*) by exercising its rights under Clause 37.1.2 of the CA and terminating the CA with immediate effect by taking over the entire operations of the Project through their own vendors/ contractors.
- 6.11 Due to the illegal, wrongful and premature termination of the CA, the Applicant was, without any fault attributable to it, deprived of its rightful proceeds from the toll revenues of the Project. Aggrieved by NHAI's decision, the Applicant filed a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("A&C Act") before the Hon'ble Delhi High Court. In terms of an order dated 25.01.2024, Hon'ble Delhi High Court disposed of the said Section 9 Petition, with a direction that the same shall be treated as an application under Section 17 of the A&C Act before the Arbitral Tribunal, once constituted. The High

Court however, was pleased to grant interim relief to the CD herein, pending the order under Section 17 by the Arbitral Tribunal, to utilize the funds lying in the escrow account for the purposes of payments of salaries to its employees and for servicing monthly interest debt component of the debt in respect of the Project.

6.12 A three-member Arbitral Tribunal comprising of retired judges of the Hon'ble Supreme Court namely, Hon'ble Justice (Retd.) Mr. Sanjay Kishan Kaul as the Presiding Arbitrator, Hon'ble Justice (Retd.) Mr. Deepak Gupta and Hon'ble Justice (Retd.) Mr. Dinesh Maheshwari [now being substituted by Hon'ble Justice (Retd.) Mr. S. J. Mukhopadhaya] as the Co-Arbitrators, came to be constituted on 29.01.2024 to adjudicate the disputes between the Applicant and NHAI.

6.13 Most pertinently, on 16.02.2024, the FC addressed a letter to NHAI criticizing the unilateral termination of the Project without prior consultation with the Lenders and further emphasized on the ongoing financial viability of the Project after specifically asserting that the Applicant had been diligently meeting its debt service obligations and was on track to settle all dues owed to both, the Lenders as well as NHAI, through toll collection by the end of the concession period. However, despite acknowledging that NHAI's termination of the CA was unilateral and wrongful, the FC has maliciously filed the captioned Company Petition, for no reason other than to seek recovery of its amounts.

6.14 Curiously, despite acknowledging that NHAI's act of terminating the CA was wrongful and unilateral, the FC permitted NHAI to override the existing escrow mechanism, which was set up *inter alia* to facilitate the servicing of debt owed

to the Consortium of Lenders, and provided assistance to set up a fresh escrow account/payment mechanism, and all toll revenues generated were redirected to the said new account/mechanism. The FC's actions clearly betray a *mala fide* and malicious attempt on its part whereby on the one hand, it acknowledges that the termination of the CA was wrongful, and on the other hand, despite having knowledge of the escrow mechanism through which the debts were serviced, the Applicant's stellar payment record, and participating in dismantling the escrow account, the Respondent proceeded to file the captioned Petition.

6.15 By an order dated 08.08.2024 (*Exhibit - F to the Reply to the CP*) passed in the Section 17 Application, the Learned Arbitral Tribunal was pleased to stay the impugned Termination Notice till the final determination of the arbitration proceedings. It would be apposite to mention that the Learned Arbitral Tribunal, in its order, has specifically observed that that the continuity of infrastructure projects is of importance, especially in the present case where the CD has incurred high capital expenditure and diligently completed the construction works, and the Project has only recently become financially viable for the stake holders.

6.16 The Arbitral Tribunal further recorded that the termination of the Project by NHAI was effected at a stage when the Project was stabilizing, both operationally and financially, and that such premature termination would cause significant financial prejudice to the Applicant as well as the Lenders. It was observed that termination would result in complete erosion of the promoters' equity and sub-debt contributions and would jeopardize the recovery of substantial public money advanced by the consortium of Lenders,

which is recoverable only from the toll collections credited to the Escrow Account. The Arbitral Tribunal accordingly recognised and acknowledged that continuity of the Project was in the interest of all stakeholders, including the Lenders, and essential to preserve the financial and commercial substratum of the arrangement and to ensure that the rights and interests of the stakeholders remain protected pending final adjudication of the arbitral proceedings, thus, a balance needed to be maintained until the final adjudication of the disputes.

6.17 Pending the aforesaid proceedings, the FC filed the captioned Company Petition, purportedly seeking the CIRP of the Applicant.

6.18 The order passed by the Learned Arbitral Tribunal was challenged by NHAI before the Hon'ble Delhi High Court, whereupon, by its order dated 17.04.2025 (*Exhibit - G to the Reply to the CP*), the Hon'ble High Court erroneously set aside the reliefs granted by the Learned Arbitral Tribunal. The CD craves leave of this Tribunal to refer to and rely upon the papers and proceedings pertaining to the Section 37 Appeal, as and when produced.

6.19 Aggrieved, the CD preferred an appeal by the way of a Special Leave Petition before the Hon'ble Supreme Court, being SLP (C) No. 11501/2025, challenging the impugned judgment dated 17.04.2025 passed by the Hon'ble Delhi High Court in Section 37 Appeal. The SLP is still under consideration of the Hon'ble Supreme Court of India.

7. Out of the aforesaid facts, it is important to consider the following:

7.1 The Respondent serviced its debt obligations in a timely and consistent manner prior to the illegal and unilateral termination of the CA by NHAI, and

would have continued to do so, as the toll revenues arising from the Project were more than sufficient and stable.

7.2 NHAI's termination of the CA was illegal, wrongful and unilateral, and entirely beyond the Applicant's control. It is also the sole cause behind the Applicant's inability to service its debt obligations and the consequent default.

7.3 The Respondent acknowledged that NHAI's termination was bad, and that the Lenders had been adversely affected only because of NHAI's action.

7.4 Post-termination of the CA, the Applicant does not have any tangible assets which can be revived and / or liquidated under the Code.

8. In light of the above, it is submitted that the captioned Company Petition has been filed solely with malicious intent and for purposes other than resolution of the CD or its liquidation. The Applicant has no tangible assets and has been placed in this situation without any act/omission of its own. On the contrary, the CD had diligently serviced its debts till December 2023, i.e., just before the illegal termination of the CA by NHAI.
9. Furthermore, the CD has a very strong case before the Learned Arbitral Tribunal, which has also *prima facie* observed that the balance of convenience lies in the Applicant's favour.
10. It is also pertinent to notwithstanding the final outcome of the arbitral proceedings, the CD is entitled to termination payment under the CA by NHAI, which has not been paid till date; Clause 37.3.1 of the CA provides for termination payment in case of Applicant's event of default (*as defined therein*), which amounts to 90% of the debt due and payable, which as on 30.09.2025, would amount to Rs. 678 crores; Clause 37.3.1 of the CA, on the other hand, provides for termination payment in case of Respondent's event of default (*as defined therein*), which

amounts to 100% of the debt due, as well as 150% of the adjusted equity (as defined therein), which as on 30.09.2025, would amount to Rs. 823 crores. The amount in default alleged by the FC, on the other hand, is only Rs. 282 crores. In either event therefore, the CD would be in receipt of such sums of money that would discharge its entire debt obligations qua the FC.

11. Furthermore, in the event the Hon'ble Supreme Court rules in the CD's favour and sets aside NHA's wrongful act of termination, the Applicant would yet again be entitled to Rs. 415 crores, which would again, effectively discharge its entire debt obligations qua the Respondent. A tabular breakdown of the aforesaid amount, as of September 2025, is set out below:

- This is a tabulation of the toll collection data extrapolated from the website of IHMCL and accessible at the web-link <https://ihmcl.co.in/etc-transaction-reports/>;
- Data for Fy 2023-24- <https://ihmcl.co.in/wp-content/uploads/2024/08/Monthly-ETC-Data-FY-23-24-2.pdf>,
- Data for Fy 2024-25- <https://ihmcl.co.in/wp-content/uploads/2025/04/Monthly-ETC-Data-FY-24-25-11.pdf>;
- Data for Fy 2025-26 (till Sep)- <https://ihmcl.co.in/wp-content/uploads/2025/07/Monthly-ETC-Data-FY-25-26-2.pdf>

S No	Month	Revenue in Rs.
1	Jan-24	71,804,925
2	Feb-24	205,676,445
3	Mar-24	217,921,355
	FY24 (Feb & Mar)	495,402,725
4	Apr-24	202,168,695
5	May-24	217,256,035
6	Jun-24	210,365,075
7	Jul-24	202,855,075
8	Aug-24	204,269,420
9	Sep-24	196,694,010
10	Oct-24	199,401,545
11	Nov-24	184,917,755
12	Dec-24	209,257,140
13	Jan-25	204,572,110
14	Feb-25	188,559,865
15	Mar-25	207,370,905
	FY25	2,427,687,630
16	Apr-25	207,725,120
17	May-25	220,920,580
18	Jun-25	205,665,790
19	Jul-25	205,525,595

S No	Month	Revenue in Rs.
20	Aug-25	200,907,845
21	Sep-25	193,169,465
	FY26	1,233,914,395
	Total	4,157,004,750

12. It is therefore evident that had the CA not been unilaterally terminated by NHAJ, pending proceedings, the CD would have continued to service its debt obligations in a timely manner, as it had been doing since the inception of the Project.
13. The CD submits that the FC was aware of all these material facts, despite which it proceeded to file the captioned Company Petition. In view thereof, it is humbly submitted that the captioned Company Petition ought to be dismissed and the FC ought to be penalized to the extent of Rs. 1 crore for its *mala fide* and malicious act.
14. It is also most respectfully submitted that it is settled law that an application under Section 65 of the IBC ought to be heard and decided by the Hon'ble Tribunal, before hearing the Company Petition on merits.
15. In any event, and without prejudice to the aforesaid, it is submitted that the present case is a fit case for stay of the proceedings in the Petition, till the Hon'ble Supreme Court adjudicates the merits of the SLP filed by the CD, since a favourable order in the said SLP would ipso facto resolve all issues which arise in the present Petition.

FC'S CONTENTIONS

16. The present Interlocutory Application is belated and frivolous, having been filed with the intent of delaying proceedings:
 - i) The present Application has been belatedly filed by the CD on October 15, 2025, in response to the Company Petition which was filed on March 27, 2025. The CD was issued notice by order dated May 8, 2025 and filed its Affidavit in Reply on June 25, 2025.
 - ii) There is no explanation as to why the CD has now, after a significant lapse of time, filed the present Interlocutory Application on October 15, 2025,

purportedly under Section 65 of the IBC, after the commencement of the final hearing of the Company Petition. Evidently, the CD has sought to file the present Application with the intent of delaying the final hearing of the Company Petition. It is accordingly submitted that the present Application itself is belated, frivolous and malicious; and ought to be dismissed, with costs.

17. The present Company Petition is filed for the *bona fide* purpose of seeking the CIRP of the CD:

- i) By the Application, the CD seeks to incorrectly contend that the Company Petition has been filed with malicious intent to invoke the provisions of IBC merely to facilitate the recovery of its monies without any bona fide intent to seek resolution of the CD. This contention is false and misleading.
- ii) At the outset, it is denied that the FC has filed the present proceeding merely to facilitate recovery of monies, and not for the bona fide intent to resolve the CD, as falsely contended in the Application. It is submitted that the CD has admittedly defaulted on the re-payment of the outstanding dues from December 31, 2023 and the CD does not appear to have the means to make payment of the outstanding amounts to the FC. Accordingly, the FC has made the decision to initiate the CIRP of the CD.
- iii) It is submitted that once it is held that once debt and default are clearly established and undisputed, the Adjudicating Authority has no discretion to reject a Section 7 application on grounds of commercial viability, recovery prospects, ongoing legal proceedings, majority lender decisions, or the pendency of an Inter-Creditor Agreement, as such considerations fall exclusively within the commercial judgment of the FC. It is submitted that

proof of debt and default alone mandates admission of a Section 7 petition.

It is respectfully submitted that this Hon'ble Tribunal or the CD ought not to substitute their views for the FC's commercial wisdom.

- iv) It is submitted that a Company Petition filed under Section 7 of the IBC cannot be rejected on the ground of alleged lack of intent for resolution. The CD has not proved to show any fraudulent or malicious intent on the part of the FC in making the decision to seek CIRP of the CD by the present Company Petition. It is submitted that the argument of "malice in law" made by the CD is nothing but a disguise to question the commercial decision of the FC to initiate and proceed with the present Company Petition.
- v) It is further denied that actions of the FC will jeopardise the actions of the CD to proceed with the arbitration proceedings and proceedings before the High Court/Supreme Court in respect of the dispute with NHAL. It is submitted that the Resolution Professional ("RP") on the instructions of the Committee of Creditors; and/or the Resolution Applicant ("RA") that takes over the management of the CD can continue the arbitration proceedings and other legal proceedings to protect the interest and assets of the CD.
- vi) It is further submitted that the purported lack of operational assets is neither a bar to CIRP nor evidence of *malafide* intent. It is submitted that revivability of the CD is a matter of commercial wisdom of the Committee of Creditors, not a ground to invoke Section 65 of the IBC.

18. The default on the part of the CD cannot be attributed to other parties; and in any case, does not restrict the statutory right of the FC under Section 7 of the IBC:

- i) It is submitted that there is no order passed by any Court/Tribunal, that is presently in operation, to hold that the defaults on the part of the CD are

attributable to NHAI or any other party, since the order passed by the arbitral tribunal in favour of the CD has been set aside by the Hon'ble Delhi High Court.

- ii) In any event, it is submitted that the cause of default is irrelevant; and what matters is whether a financial debt exists and has remained unpaid. It is reiterated and submitted that once debt and default are clearly established and undisputed, this Hon'ble Tribunal has no discretion to reject a Section 7 application on the ground of commercial viability or to look into the particular reasons for default.
- iii) In any event, it is submitted that the letter dated February 16, 2024 relied on by the CD only merely reflects the FC's commercial assessment at that time; it does not preclude the FC from exercising its statutory rights under Section 7 of the IBC upon subsequent default. It is submitted that the FC's past views do not prejudice or restrict the FC's right to initiate proceedings under Section 7 of the IBC, upon debt and default on the part of the CD; and when the CD ceased to be commercially viable.
- iv) It is further denied that the FC has assisted or permitted the NHAI to divert monies out of the Escrow Account. It is reiterated and submitted that the FC is not concerned with the *inter se* disputes between NHAI and the CD. It is reiterated and submitted that upon establishment of debt and default on the part of the CD, the Company Petition filed under Section 7 of the IBC must be admitted.

19. Ongoing Arbitration Proceedings; and/or Supreme Court Proceedings does not bar the right of the FC to initiate and proceed with present Company Petition under Section 7 of the IBC against the CD:

- i) It is submitted that the pendency of the legal proceedings between the CD and the NHAI will not to be a ground for dismissing the present Company Petition.
- ii) It is submitted that under Section 63 of the IBC, no civil court or authority shall have the jurisdiction to entertain any suit or proceedings in respect of a matter that this Hon'ble Tribunal has jurisdiction. It is further submitted that under Section 64(2) of the IBC, no injunction shall be granted by any court, tribunal or authority in respect of any action taken or to be taken, in pursuance of any power conferred on this Hon'ble Tribunal. It is further submitted that under Section 231 of the IBC, no civil court shall have jurisdiction in respect of any matter in which this Hon'ble Tribunal is empowered by or under the IBC to pass an order.
- iii) Hence, there is no question of the ongoing legal proceedings between the CD and the NHAI in any manner impacting or barring the statutory right of the FC to file the present Company Petition under Section 7 of the IBC against the CD, on account of debt and default of the CD.

20. There is no guarantee that the CD will be entitled to termination payments under the Concession Agreement, which remain contingent, uncrystallised and disputed:

- i) It is submitted that the amounts purportedly due and payable to the CD as "termination payments" under the Concession Agreement are contingent, disputed, and uncrystallised, and do not extinguish present default.
- ii) It is submitted that the existence of alternative contractual remedies does not derogate from Section 7 rights, particularly in view of Section 238, which grants primacy to the IBC. In any event, there is no visibility or

guarantee that the CD would ever recover these amounts from the NHAI in the course of the ongoing legal proceedings; and be able to satisfy the outstanding debt due to the creditors.

CD'S NOTE OF SUBMISSIONS

21. *Malafide* intention to recover monies by initiating CIRP proceedings:-

- i) It is submitted that the present proceedings are not instituted with a motive to revive the CD. The present proceedings have been instituted with a malafide intention to recover monies, and not revive the CD as a going-concern as demonstrated hereinbelow.
- ii) The CD is an SPV formed for the purpose of constructing and managing Toll Road Project Highway. The CD does not have any assets whatsoever. The only right which the CD had was the collection of tolls under the CA, which also stands illegally terminated as on date.
- iii) In light of the above, the only limited role for which the SPV would exist is for litigating/arbitrating the illegal termination of the CA by NHAI.
- iv) Hence, the initiation of CIRP proceedings would serve no real purpose except for finding a prospective Resolution Applicant for taking up litigation. Since the CD is an SPV incorporated only for the purpose of the Project, the SPV cannot be revived as a going concern.
- v) Furthermore, such an initiation of CIRP proceedings would be counter-productive as the present management of SPV is fully aware about the litigation/arbitration in relation to CA, pending against NHAI. In fact, it is because of the familiarity and specialised knowledge of the management of SPV about the Toll Project that CD was able to secure stay on the illegal termination of CA from the Hon'ble Arbitral Tribunal comprising of Hon'ble

Justice (Retd.) Mr. Sanjay Kishan Kaul as the Presiding Arbitrator, Hon'ble Justice (Retd.) Mr. Deepak Gupta and Hon'ble Justice (Retd.) Mr. Dinesh Maheshwari [now being substituted by Hon'ble Justice (Retd.) Mr. S. J. Mukhopadhaya]. If the IRP is appointed, the litigation/arbitration against NHA1 which is the only source of recovery for SPV may stand hampered.

- vi) In light of the above, filing of the present Petition amounts to legal malice as the purpose of initiating CIRP is not to revive the CD, but the oblique motive to recover monies.
- vii) In this regard, reliance is placed on the following decisions wherein it was held that there is malice in law when there is exercise of power for some collateral or oblique motives and which is not in consonance with the purpose of the legislation conferring the said power. It involves deliberate doing of wrongful with a pretention of gaining a legitimate goal.
- a) *Kangana Ranaut v. MCGM, 2020 SCC OnLine Bom. 3132, Para 162*
- b) *Reserve Bank of India Employees v. State of Maharashtra, 2014 SCC OnLine Bom. 1558, Para 29*
- viii) Further, reliance is also placed on the following decisions wherein it has been held that an application under Section 65 is maintainable after the application is filed either under Section 7, 9 or 10 of the IBC and not after the admission, and this Hon'ble Tribunal is obliged to investigate the nature of the transaction and should be very cautious in admitting the Application in order to prevent taking undue benefit of provisions of IBC to detriment of the rights of legitimate creditors as well as to protect the CD from being dragged into CIRP with malafide.

- a) *Wave Megacity Centre Private Limited V. Rakesh Taneja & Ors.* 2023 SCC OnLine NCLAT 50 [See Para 14, 15 & 20];
- b) Comp. App. (AT) (Ins) No. 1406 of 2023 & I.A. No. 5032 of 2023-*Devashree Developers V. Aravali Cylinders Pvt. Ltd* vide judgment dated 05.08.2024 [See Para 8-12];

22. Financial viability and good prospects of payment of the entire debt by the CD:-

- i) It is pertinent to note that pursuant to the Sanction Letter dated 14.03.2011 [Pg. 17, Vol. I, Petition], and the Common Rupee Loan Agreement dated 17.02.2012 [Pg. 31, 170, Vol. I, Petition], the total loan extended by the consortium of lenders (which includes the FC) was Rs. 555 Crores. Further, as per the Petition, the total debt due and payable to FC is Rs. 282.59 Crores [Pg. 11 of the Petition].
- ii) It is submitted that CD can repay entire debt and due payable to FC, and other lenders as evident from the following:
 - a) Admitted entitlement of SPV to termination payments – Pursuant to Clause 37.3.1 of the Concession Agreement, upon termination even on account of Concessionaire default after project completion date, an amount equal to 90% of the debt due (less insurance cover) will be paid to the Concessionaire. Hence, substantial portion of the debt of the FC can be paid through the said sums even if the Arbitral Tribunal holds that the termination of the CA is valid as the CD was at the default.
 - b) Admission of the FC – In FC's own letter dated 16.02.2024 [Ex. D, Pg. 74 of S. 65 Application], it is stated that the unilateral actions of NHAI was not in the interest of the lenders, and that the balance available period of more than 10 years would generate a revenue of more than

3000 crore, which amount, in the estimate of the FC, would be more than adequate to take care of the liabilities of the lenders / NHAI.

- c) Toll revenues generated from January 2024 to September 2025 – Pursuant to the issuance of the termination notice by NHAI, the FC has facilitated shifting of the escrow account for the deposit of the toll revenue. In this regard, the toll collections from January 2024 to September 2025 is Rs. 415 Crores which would discharge the debt of the FC, as and when the order of the Arbitral Tribunal is upheld by the Hon'ble Supreme Court.
- d) Decision of the Hon'ble Delhi High Court was not on merits – The Arbitral Tribunal in its order dated 08.08.2024 has dealt with the merits, and prima facie concluded that the maintenance obligations were duly performed by the CD. Per contra, except for relying on the provisions of the Amended SRA, the Hon'ble Delhi High Court has not rendered (or overturned) the findings of the Arbitral Tribunal, more particularly, regarding the non-performance of maintenance obligations justifying termination of the CA. In fact, in paragraph 113 of the order, it is noted that since the evidence which is yet to be led by the parties, the merits/demerits of the termination notice will not be dealt with. In light of the above, there are good prospects that the order of the Arbitral Tribunal will be upheld by the Hon'ble Supreme Court.
- iii) For the foregoing reasons, it is clear that the CD has strong prospects of ensuring that the entire debt of not only FC, but all the other lenders is also duly paid. Hence, this Hon'ble Tribunal ought to exercise discretion, and not push the CD into CIRP proceedings.

- iv) In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Vidarbha Industries Power Ltd. v. Axis Bank*, (2022) 8 SCC 352, Paras 61, 77, 81, 88 wherein it has been held that this Hon'ble Tribunal ought to exercise discretion while admitting a S. 7 Petition, and other factors, namely, financial viability and overall health of the CD, and the existence of award/decreed in favour of CD which may clear the entire debt ought to be considered.

23. The hearing of the present Petition ought to be deferred until the final outcome of the proceedings before the Hon'ble Supreme Court:-

- i) It is submitted that since the Hon'ble Supreme Court is seized of the matter, and its decision would have a direct relevance for the purpose of adjudication of the present Petition, the adjudication of the present Petition ought to be deferred until the final outcome of the proceedings pending before the Hon'ble Supreme Court.
- ii) The SC *vide* order dated 17.09.2025 has been pleased to direct that 'In view of the urgency expressed by both the parties, list the matter for final disposal on 21st November, 2025'. Thereafter, in the hearing held on 21.11.2025, the SC has been pleased to list the matter on 03.02.2026 for final disposal.
- iii) Furthermore, it is also submitted that no prejudice would be caused to the FC if the hearing of the present petition is deferred. As stated above, since SPV does not have any assets, and the only role that the IRP, and thereafter the prospective resolution applicant, may have, upon taking over of the CD, is to pursue litigation/arbitration in respect of wrongful termination of the CA.

- iv) Per contra, non-deferring of the hearing of the present petition would cause severe prejudice. If the CD is pushed to CIRP, the prospects of recovery of the payments on account of wrongful termination of the CA by NHAI shall be hampered and would virtually seal the fate of CD and the wrongful, illegal actions of NHAI would stand vindicated.

24. Defects and latches in the CP, thereby rendering the CP liable to be dismissed:-

- i) Without prejudice to the foregoing, the Statement of Accounts is defective as it is not backed by an appropriate certificate as per Section 2A of the Bankers Books Evidence Act, 1891.
- ii) As per Section 2A of the BBEA, a Certificate is required to be signed by the person who is in charge of the computer system containing the brief description of a computer system and its particulars. Further, a certificate is required from a principal accountant or a Branch Manager with whom the account of the CD is maintained. The Certificate does not appear to have been signed by the principal accountant, branch manager, or the person in-charge of the computer systems. This stand was further fortified by the issuance of different documents by different branches.
- iii) The Letter of Authority issued to the signatory of the CP appears to have been issued by the Stressed Assets Management (SAM) Branch, BKC Mumbai. [Ex-1, Vol- I, CP @ Pg. 16].
- iv) The Section 13(2) Demand Notice is issued by the Large Corporate Branch, Nariman Point, Mumbai. [Ex.-15, Vol- IV, CP @ Pg. 575].
- v) The NeSL certificate is by Stressed Asset Management Wing, Bengaluru, Karnataka. [Ex.-17, Vol- IV, CP @ Pg. 582].

- vi) Letters by the FC is issued by Large Corporate Branch, Nariman Point, Mumbai. [Ex.- J to M, Reply to the CP @ Pgs. 179-188].

ADDITIONAL AFFIDAVIT BY CD

25. The matter was listed on 07.04.2024 before the Hon'ble Supreme Court at fixed time of 2:00 PM under the caption of "final disposal". However, NHAI circulated an application for adjournment for a week on the grounds being "seeking adjournment due to occupation of Ld. Solicitor General Sh. Tushar Mehta representing the NHAI in Constitution bench". While the request for adjournment was opposed by the Applicant *vide* its email dated 06.04.2026 on the grounds that grave prejudice would be caused to the Applicant if the matter is not finally heard, the Hon'ble Supreme Court adjourned the matter by a week till 14.04.2026.
26. *Vide* Office Memorandum dated 09.04.2026 of Government of India, a Public Holiday has been declared on 14.04.2026 for all Central Government offices, including the Hon'ble Supreme Court of India.
27. The present Applicant is at the cusp of being afforded an opportunity to agitate its case on merits and is likely to secure a favourable outcome, including repayment of the lenders, including the Financial Creditor. The Applicant humbly seeks that the proceedings presently pending before this Hon'ble Tribunal be deferred by a period of four (4) weeks to avail the remedy before the Hon'ble Supreme Court and as facts herein below will demonstrate.
28. In the event the Special Leave Petition filed by it before the Hon'ble Supreme Court stands adjudicated in its favour, a sum of Rs. 532 crore, which is the amount of toll collected during the period the operations have been taken over by NHAI, will be available for utilisation by the lenders against outstanding debts of the Applicant, including the Financial Creditor herein. This amount in itself is nearly

double the Rs. 282 crore claimed to be in default by the Financial Creditor in the present petition, and even assuming certain sums are expended towards O&M and other operational expenses during the period the toll was under control of NHAI, sufficient amounts will be available for repayment of the Financial Creditor as also the other consortium lenders.

29. Furthermore, the balance tenure of the Concession period, that would stand revived, in the event of a favourable adjudication of the Supreme Court proceedings, will be more than sufficient to meet all liabilities of not only all the lenders including the Financial Creditor but also all other stakeholders viz., premium payable to NHAI, costs and expenses to be incurred for undertaking O&M of the Project. This fact is even substantiated in the Financial Creditors own letter dated 16.02.2024.
30. The Corporate Debtor's repayment capabilities are presently constrained due to abrupt and illegal termination by NHAI. Therefore, being aggrieved by illegal termination, the Corporate Debtor referred the dispute to arbitration wherein it has preferred claims aggregating to Rs. 1703 Cr plus interest.
31. As has been previously disclosed by the Applicant, in the application filed under Section 17 of Arbitration and Conciliation Act, 1996 ("A&C Act"), challenging the illegal termination of the Concession Agreement in favour of the Applicant by NHAI and for restoration of control of the Project, the arbitral tribunal by an unanimous order dated 08.08.2024 stayed the termination of the Concession Agreement by NHAI till the disposal of Arbitral Proceedings.
32. Being aggrieved, NHAI filed an appeal before the Hon'ble Delhi High Court under Section 37 of the A&C Act, which was allowed by the Hon'ble Delhi High Court, which upheld the Termination by NHAI.

33. The Applicant has preferred SLP against the Section 37 order of the Hon'ble Delhi High Court along with (i) IA No. 153628/2025 seeking impleadment of Financial Creditor herein as party in the proceedings (ii) IA No. 153630/2025 seeking direction upon NHAI to deposit toll proceeds collected from the Project in the escrow account maintained by parties for utilisation in terms of waterfall mechanism as specified in escrow agreement and for deferment of the proceedings pending before this Hon'ble Tribunal, pending disposal of SLP.
34. As per Indian Highways Management Company Limited ("IHMCL") data, the Project has generated INR 532 Crores toll collection between 22.01.2024 to 31.03.2026, that indicates Rs. 20 Cr Collection per month, which demonstrates that the Corporate Debtor is going concern and Project is successfully running.

5. ANALYSIS AND FINDINGS

- 5.1 We have perused the documents as placed before us and heard both the Ld. Counsels for the FC and the CD.
- 5.2 It is the case of the FC that the CD was incorporated as a special purpose vehicle for the execution of a highway project awarded by NHAI under a concession arrangement on a DBFOT basis. For the implementation of the project, the CD availed financial assistance from a consortium of lenders led by the FC, and various financing and security documents were executed to secure the facilities. The project achieved provisional commercial operations in April 2016, and the CD serviced its debt obligations until August 2023. However, on account of cash flow constraints, coupled with developments including the issuance of a termination notice by NHAI and failure of restructuring efforts, the CD defaulted in repayment of its dues.

Consequently, the account was classified as NPA and recall notice was issued, yet the outstanding dues remained unpaid.

5.3 The CD herein filed I.A. 5338 of 2025 on 15.10.2025 under Section 65 r/w Section 60(5) of the IBC, seeking the reliefs as mentioned herein above.

5.4 The grievances of the CD in the said I.A. are the following:

- a) The Company Petition filed by the FC under Section 7 of the IBC has been instituted maliciously and for a purpose other than insolvency resolution, namely for recovery of monies.
- b) The alleged default arose solely because of the unilateral and wrongful termination of the Concession Agreement (CA) dated 02.07.2010 by the NHAI and that prior to such termination the CD had regularly serviced its debt obligations.
- c) The CD is a special purpose vehicle (SPV) having no asset apart from its contractual rights under the CA and its pending arbitral and Supreme Court proceedings against NHAI, and therefore initiation of CIRP would serve no purpose except recovery.
- d) Substantial termination payments may become payable to the CD and that, in the event of success before the Hon'ble Supreme Court, toll revenues collected by NHAI may also become available for discharge of debt.

5.5 At the outset, the scope of Section 65 of the IBC requires consideration. Section 65(1) provides that where any person initiates insolvency proceedings fraudulently or with malicious intent for any purpose other than the resolution of insolvency, or liquidation as the case may be, the Adjudicating Authority may impose a penalty. The legislative intent behind Section 65 is to prevent abuse of the insolvency process. However, mere filing of an application under Section 7

by a financial creditor, when debt and default exist, cannot by itself amount to fraudulent or malicious initiation. The burden lies heavily on the applicant invoking Section 65 to establish, through cogent material, that the proceedings are a colourable exercise of jurisdiction and are instituted for a purpose wholly alien to the objectives of the IBC.

5.6 This Tribunal refers to its judgment passed in **Canara Bank v. Supreme Best Value Kolhapur (Shiroli) Sangli Tollways Private Limited** in CP (IB) No. 414/MB/2025 (which was upheld by the Hon'ble NCLAT reiterating that speculative future recoveries, pending arbitration claims, or disputes with third parties do not destroy an admitted default under Section 7 of the IBC), wherein an almost identical contention was raised by the CD that the Section 7 proceedings were allegedly initiated with *mala fide* intent since the default had arisen due to disputes with NHAI under the concession agreement, and that pending arbitral proceedings/termination claims would eventually enable repayment of lenders. This Tribunal, while rejecting such contention, held that the existence of arbitral proceedings, contractual claims against NHAI, or prospective recoveries under the concession agreement cannot dilute the statutory right of a FC to initiate proceedings under Section 7 once financial debt and default are established. It was further held that Section 65 of the IBC cannot be invoked merely because the CD alleges that the FC is motivated by recovery, in the absence of cogent material establishing fraudulent or malicious initiation of insolvency proceedings.

5.7 In the present case as well, the entire structure of the CD's case under Section 65 rests upon the assertion that its default arose due to the alleged wrongful termination of the Concession Agreement by NHAI and that pending arbitral

proceedings as well as proceedings before the Hon'ble Supreme Court may result in recovery of substantial sums in future. However, such prospective and contingent recoveries cannot be treated as a substitute for repayment of presently due and payable financial debt. The entitlement claimed by the Applicant towards termination payments, toll collections and arbitral claims remains disputed and uncrystallised. Mere pendency of proceedings before the Arbitral Tribunal or the Hon'ble Supreme Court does not create an embargo on the statutory remedy available to the FC under Section 7 of the IBC.

5.8 The Hon'ble Supreme Court in ***Innoventive Industries v. ICICI Bank*** [(2017) 8 SCR 33] has categorically held that at the stage of admission of a Section 7 application, the Adjudicating Authority is required to examine whether a financial debt exists and whether default has occurred. Once such satisfaction is recorded, the application ordinarily deserves admission unless incomplete. Similarly, in ***E.S. Krishnamurthy v. Bharath Hi Tech Builders Pvt. Ltd.*** [Civil Appeal No 3325 of 2020], the Hon'ble Supreme Court held that the Adjudicating Authority cannot enter into extraneous considerations once debt and default are established. Though reliance has been placed by the CD on *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*, the said judgment turned on its peculiar facts involving a crystallized regulatory award in favour of the corporate debtor and cannot be read as laying down a general proposition that speculative future recoveries or contingent claims can defeat a Section 7 petition.

5.9 In the matter at hand, the existence of financial debt is undisputed. The CD itself admits that consortium lenders had advanced approximately Rs. 555.26 crores towards the project, out of which the FC's exposure is stated to be Rs. 310 crores. The petition records an outstanding default of approximately Rs. 282

crores. It is also not disputed that the CD committed default from 31.12.2023 onwards. The Applicant has nowhere denied non-payment. Rather, its entire defence is that such default occurred due to NHAI's allegedly wrongful actions. Even if such contention is assumed to be correct, the cause of default does not extinguish the occurrence of default itself. The IBC does not require this Adjudicating Authority to adjudicate whether the default was commercially justified, whether it arose due to third party conduct, or whether the corporate debtor may eventually recover monies from another entity.

5.10 The disputes between the Applicant and NHAI are admittedly pending before the Hon'ble Supreme Court. The legality of the termination notice dated 22.01.2024 remains *sub judice*. This Adjudicating Authority cannot convert proceedings under Section 65 into a forum for adjudicating contractual disputes arising under the CA. Whether NHAI wrongfully terminated the agreement, whether the CD is entitled to restoration of toll rights, whether termination payments are payable, and whether toll revenues collected by NHAI are recoverable are all issues falling within the jurisdiction of the arbitral forum and constitutional courts. They remain uncertain and contingent at present.

5.11 The CD has strongly relied upon the order dated 08.08.2024 passed by the learned Arbitral Tribunal, staying termination. However, it is an admitted position that the said order was subsequently set aside by the Hon'ble Delhi High Court on 17.04.2025. The matter is presently pending before the Hon'ble Supreme Court. Therefore, no operative judicial determination presently exists conclusively holding that NHAI acted illegally. In the absence of such final adjudication, this Tribunal cannot presume success of the Applicant in pending proceedings.

- 5.12 Equally unpersuasive is the argument that the CD may receive termination payments ranging between Rs. 678 crores and Rs. 823 crores or may recover Rs. 532 crores in toll collections. These amounts are neither admitted nor crystallized. They are dependent upon the outcome of pending litigation and arbitral proceedings. A contingent claim cannot be equated with presently available funds sufficient to discharge existing debt. The IBC deals with present inability to service debt and not with speculative future recoveries.
- 5.13 The prayer seeking *sine die* adjournment of the Section 7 petition till disposal of proceedings before the Hon'ble Supreme Court also cannot be granted. The IBC mandates expeditious determination of insolvency proceedings. Acceptance of such a prayer would defeat the timelines prescribed under the statute and permit indefinite suspension of creditor remedies on the basis of uncertain future outcomes.
- 5.14 The correspondence dated 16.02.2024, relied upon by the CD, also does not establish malice. At best, it demonstrates that the FC had at one stage expressed concern regarding the impact of NHAI's actions on project viability. Such communication cannot permanently estop the FC from exercising its statutory rights after a persistent default occurred and repayment obligations remained unsatisfied.
- 5.15 It has also come to this Tribunal's notice that in SLP(C)No. (s)11501/2025 filed by the CD, challenging the impugned judgment dated 17.04.2025 passed by the Hon'ble Delhi High Court, *vide* its order dated 19.05.2026, the Hon'ble Supreme Court has rejected the prayer for interim relief. The relevant portion of the said order is recorded hereunder:

“3. Having considered the matter in detail, we are not inclined to pass any interim order pending disposal of the civil appeal. Prayer for interim relief is, accordingly, rejected.

4. Post the civil appeal for final disposal in the Regular Hearing list in the month of September, 2026.”

5.16 Accordingly, **IA No. 5338/(MB)2025** filed under Section 65 r/w Section 60(5) of the Insolvency and Bankruptcy Code, 2016 is **dismissed**.

5.17 Upon consideration of the submissions and the material placed on record, it is evident that the existence of financial debt and its disbursement is not disputed. The execution of loan agreements and security documents, along with acknowledgement of liability through revival letters, stands established. The record of default, supported by account statements and classification of the account as NPA, *prima facie* demonstrates occurrence of default within the meaning of the IBC.

5.18 The defence raised by the CD is primarily premised on pendency of disputes with NHA1 and the alleged wrongful termination of the concession, which has impacted its revenue generation. However, such disputes with third parties do not detract from the liability of the CD towards the FC. The scope of inquiry under Section 7 is limited to the ascertainment of the existence of debt and default, and this Adjudicating Authority is not required to adjudicate upon collateral disputes or claims pending before other forums.

5.19 Hon'ble Supreme Court in Civil Appeal No(s). 2211/2024 decided on 18.02.2026 in the matter of ***Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan***

Madan, IRP of Hiranmaye Energy Ltd. and Ors. while examining the validity of the admission of the Corporate Debtor to CIRP has laid down as under :-

“B. Validity of CIRP Admission

28. *The other aspect on which the Appellant has heavily relied is the acceptance of various sums of money paid by the Corporate Debtor purportedly under the 1st and 2nd restructuring proposals, which according to them amounts to deemed approval of such proposal. As discussed earlier, such argument flies in the face of the fact that the 2nd Respondent had resolutely maintained and rightly so, that the restructuring proposals were underpinned on pre-implementation conditions which the Corporate Debtor had failed to fulfil. Under such circumstances, receipt of various sums of money would not amount to acceptance of the restructuring proposals, thereby novating the earlier loan agreement. Neither would such part payments constitute full satisfaction of the existing debt so as to render the Section 7 application inadmissible.*

29. *It has also been vociferously contended that the Corporate Debtor is an ongoing concern and does not lack the ability to repay the debt. It has a subsisting PPA for 25 years with WBSEDCL, and has raised bills of Rs. 906 crore from 01.11.2024 to 31.03.2025. It also has a continuous fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI scheme and had earned EBIDTA of Rs. 20 crore per month during the CIRP. These facts though attractive at first blush, do not yield either legal or factual justification to rebut the admission of the Section 7 application.*

30. *On the legal score, one must bear in mind the scope and purpose for which IBC was promulgated. The main objective of its enactment was to create a complete code for easy, prompt and seamless resolution of insolvency process and thereby ensure that the net worth of the corporate debtor is not dissipated and the entity is salvaged from corporate death through a viable resolution plan accepted by its CoC. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process may 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. Such insolvency process may be initiated either by the corporate debtor itself, or by its creditors who are classified as financial creditor or operational creditor. “Financial creditor” is defined as any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned.²⁶ A “financial debt” means a debt along with interest if any, which is disbursed against the consideration for time value of money and includes money borrowed against payment of interest.²⁷ “Operational creditor” is defined as a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned.²⁸ “Operational debt” is a claim in respect of the provision of goods or services including employment or a debt in respect of payment of dues arising under any law for the time being in force and payable to the Central or State government, or any local authority.²⁹ 31. In *Swiss Ribbons (P) Ltd. v. Union of India* [(2019) ibclaw.in 03 SC],³⁰ such classification of creditors as financial creditors and operational creditors has been held to be constitutionally valid. The Bench underscored the essential differences between a financial creditor and operational creditor and held that financial creditors were mostly secured creditors like banks and financial institutions who extended finance to enable a corporate debtor to set up and/or operate its business. Such credit is extended to a corporate debtor under well-defined loan agreements having specified repayment schedules and reserving rights to recall the loan in case of default or restructure the same enabling a corporate debtor to tide over unforeseen financial stress. On the contrary, operational creditors are mostly unsecured creditors and their claims are relatable to supply of goods and services in the operation of the business. Ordinarily, operational debts are not based on admitted documents and the possibility of genuine disputes with regard to such debts is much higher compared to financial debts.

32. In light of such classification, the Code makes a distinction in the manner in which an insolvency process may be initiated by a financial creditor under Section 7, IBC in contradistinction to an operational

creditor under Section 8 and 9, IBC. Unlike an operational creditor, a financial creditor may trigger an insolvency process under Section 7 in respect of default of any financial debt, whether owed to itself or to any other financial creditor. While the financial creditor may directly file an application under Section 7 setting out the particulars of the financial debt and evidence of default, the operational creditor, on the occurrence of a default, is to first deliver a demand notice of the unpaid debt to a corporate debtor and the latter may within 10 days of receipt of such demand notice bring to the notice of the operational creditor the existence of a dispute or record the pendency of a pre-existing suit or arbitration proceeding in respect of such debt. Once a corporate debtor demonstrates a dispute regarding the existence of the debt, the insolvency process stands aborted vis-à-vis the operational creditor. But 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 which has been succinctly summed up in Innoventive (supra):

“30..... 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. Reiterating the ratio in Innoventive (supra), this Court in *ES Krishnamurthy v. Bharath Hi-Tech*

Builders (P) Ltd. [(2021) ibclaw.in 173 SC]32 held as follows: “34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. 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). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute.”

34. In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under Section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company.

The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is “to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation.”

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

“61. In our view, the Appellate Authority (NCLAT) erred in holding that the adjudicating authority (NCLT) was only required to see whether there had been a debt and the corporate debtor had defaulted in making repayment of the debt, and that these two aspects, if satisfied, would trigger the CIRP. The existence of a financial debt and default in payment thereof only gave the financial creditor the right to apply for

initiation of CIRP. The adjudicating authority (NCLT) was required to apply its mind to relevant factors including the feasibility of initiation of CIRP, against an electricity generating company operated under statutory control, the impact of MERC's appeal, pending in this Court, order of Aptel referred to above and the overall financial health and viability of the corporate debtor under its existing management.

.....
.....

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

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

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

37. Finally, the apparent dichotomy between Innoventive (supra) and Vidarbha (supra) was set at rest in M. Suresh Kumar Reddy (supra), wherein this Court observed: "14. Thus, it was clarified by the order in review that the decision in Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in Innoventive Industries and E.S. Krishnamurthy. The view taken in Innoventive Industries still holds good."

38. In light of the ratio in M. Suresh Kumar Reddy (supra) there is no cavil that the ratio in Innoventive (supra) lays down the correct proposition of law and the observations in Vidarbha (supra) were made in the

facts of the case and do not operate as binding precedent.

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

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

(emphasis wherever required supplied)

5.20 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 may 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.

5.21 Applying the ratio of Power Trust (*supra*), we are of the view that the Application is complete in all respects; the Applicant has advanced a financial debt which is in default for an amount exceeding Rs. 1 Crore. The Applicant has placed necessary proof, being a record of default issued by the information utility which clearly indicates that the debt is in default. It is noted that the Respondent/Corporate Debtor has not denied the disbursement and default.

5.22 Accordingly, in our view, there exists a debt which is in default and the said debt is within limitation and exceeds the threshold prescribed under Section 4 of IBC, 2016. The present Application is otherwise complete. No disciplinary proceedings are pending against the proposed IRP.

5.23 In view of the above, we are left with no choice but to order the commencement of the CIRP on the CD.

5.24 Let a copy of this order be provided to IBBI for the purpose of recording an entry in the register referred to in Section 196 of IBC, 2016. The RP shall also make copies of this order available to all the creditors and the Personal Guarantor within one week from today.

5.25 We make it clear that at this stage we have not crystallised the amount as claimed in this Application; the same is left to be collated by the IRP.

ORDER

In view of the aforesaid findings, this Application bearing **C.P. (IB) No. 522/MB/2025** filed under Section 7 of IBC, 2016, by Canara Bank, the Applicant (FC) for initiating CIRP in respect of H.K. Toll Road Pvt. Ltd., the CD, is **admitted.**

We further declare a moratorium under Section 14 of IBC, 2016 with consequential directions as mentioned below:

- I. We prohibit:
 - a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor, including the 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, and;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made immediately as specified under Section 13 of the IBC read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Sanjay Kumar Mishra**, having **Registration No. IBBI/IPA-001/IP-P01047/2017-18/11730**, and **e-mail address ipsaniaymishra@rediffmail.com / sanjaymishra313@gmail.com**, having AFA valid till 30.06.2027, as the IRP to carry out the functions under the IBC.
- VI. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
- VII. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the IBC. The officers and managers of the Corporate Debtor are directed to provide all assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. Coercive steps

will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.

- VIII. That the IRP/IP shall submit to this Tribunal monthly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- IX. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- XI. The IRP is directed to issue notice of admission upon all the statutory authorities of the Corporate Debtor without fail.
- XII. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
- XIII. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
- XIV. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)

//AS//

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)