NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P3.

C.P. (IB)/782(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **19.06.2026**

NAME OF THE PARTIES: **Mr. Dharmendrakumar Sumatichandra Sheth**
(Sole Proprietor of M/s Rotek Engineer)
Vs
M/S Galaxy IEC India Private Limited

Under Section 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)

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

//VM//

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.782/MB/2025

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

IN THE MATTER OF:

Mr. DHARMENDRAKUMAR SUMATICHANDRA SHETH
(Sole Proprietor of M/s Rotek Engineer)
5th Floor, 507, Abhishree Avenue
Opp. Hanuman Temple, Nehrunagar
Ahmedabad-380015, Gujarat.

…Financial Creditor/Applicant

V/s

M/S GALAXY IEC INDIA PRIVATE LIMITED
[CIN: U74140MH2010PTC206456]
RP 14, Road No.5 Galaxy House
Sudama Nagar, Dombivli East
Mumbai - 421201, Maharashtra.

...Corporate Debtor

Pronounced: 19.06.2026

CORAM:
HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor: Adv. Mr. Rohit Gupta a/w Adv. Mr. Vikash Kumar
Corporate Debtor: Adv. Mr. Rohan Rajadyaksha a/w Adv. Mr.Abhishek Thoke a/w Adv. Ms. Mansi Joshi i/b Alathea Law LLP.

ORDER

[PER: BENCH]

1. BACKGROUND

1.1 This is an Application bearing C.P. (IB) No.782/MB/2025 filed on 04.08.2025 by Mr. Dharmendrakumar Sumatichandra Sheth, the Sole Proprietor of M/s Rotek Engineers, the Applicant (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of M/s Galaxy IEC India Private Limited, the Corporate Debtor (CD).

1.2 The Applicant is engaged in the business of engineering and ancillary services. The CD, a company engaged in EPC contracting for instrumentation and electrical systems for industrial plants and infrastructure projects.

1.3 The Applicant has proposed the name of Mr. Darshan Priyakant Shah, having registration no. IBBI/IPA-001/IP-P-02559/2021-2022/13893, to act as an IRP along with his written communication in Form-2 and valid AFA till 31.12.2025. However, on perusal of the IBBI website, it is seen that the AFA of the proposed IRP is not available. Thereafter, the Applicant filed a purshish dated 29.05.2026 stating that they have no objection if the Adjudicating Authority appoints any other IRP from the panel of the RPs.

1.4 The Applicant has relied on the following documents:

i. Copy of Master Data of the Corporate Debtor from the website of MCA.

ii. Copy of request for financial assistance/arrangement

iii. Copy of agreement dated 05.05.2023

iv. Copy of bank statements

v. Copy of the provisional balance sheet alongwith the email dated 07.02.2024.

vi. Copy of the legal notice dated 26.07.2024

vii. Copy of notice dated 27.08.2024 and 15.05.2025.

viii. Copy of annual return.

ix. Copy of Form-C .

x. Copy of computation of the amount and days of default in the tabular form.

xi. Copy of consent form of the proposed IRP.

2. AVERMENTS OF THE APPLICANT

2.1 The Applicant sought liberty to amend the Application qua the date of default. This Tribunal *vide* interim order dated 11.08.2025 granted liberty to the Applicant to amend Form-1. The facts of the amended Application are as under:

2.2 As per Part-IV of the amended Application the total amount claimed to be in default by the Applicant is Rs. 4,77,98,690/- (Four Crore Seventy-Seven Lakhs Ninety-Eight Thousand Six Hundred and Ninety Rupees) inclusive of principal and interest amount calculated at the rate of 18% p.a. till 25.06.2025.

2.3 It is submitted that the CD approached the Applicant seeking financial assistance for its working capital requirements and future business expansion and pursuant to the said approach, the CD issued a formal “Request for Financial Assistance/Arrangement” (RFA) to the Applicant. The RFA set out elaborate financial projections, including expected returns on debt and equity and contained a clear structure whereby any debt funding would carry an interest of 18% per annum and any equity investment would yield a dividend return of 20%. Copy of the RFA is annexed as Exhibit-C to the Application.

2.4 The Applicant entered into negotiations, after several representations made by the CD, particularly by its Director Mr. Vijay Avhad. While the RFA projected an optimistic business outlook, the Applicant remained cautious and initiated multiple rounds of discussions and document exchanges to assess the viability of any financial participation. During the discussions initiated by the Applicant, the CD hastily presented an Agreement dated 05.05.2023 signed, stamped and notarised by the CD but never signed by the Applicant. This document outlined the preliminary transaction structure and expressly contemplated that any investment would only materialise upon execution of definitive binding documents.

2.5 In the said agreement, Clauses 10 and 13, clearly laid down that the terms of any investment were subject to further mutually agreed definitive agreements, including a share subscription agreement and shareholders agreement and would include provisions on dividend policy and other customary elements. The relevant clauses are produced below:

> *"10. Transaction Structure: The Parties recognize that this Agreement sets out the preliminary transaction structure and the final transaction structure (including but not limited to the domicile of the Partner) to be set out in the Definitive Agreements (as defined below) will be jointly determined and agreed mutually between the Parties with the aim to provide both Parties with the most efficient structure (from a time and cost perspective), subject to all applicable legal, tax and regulatory considerations.*
>
> *13. Definitive Agreements: The Parties shall use reasonable endeavours to finalize, based on the terms contained in this Agreement, in good faith, the terms and conditions of the necessary legally binding agreements ("Definitive Agreements") with respect to the Proposed Transaction and which shall at a minimum include: (i) a share subscription agreement, (i) a shareholders agreement; and (iii) any other documents necessary under applicable law, as is customary or arising from due diligence, to give effect to the Proposed Transaction. The Definitive Agreements will also contain provisions relating to (i) the dividend policy; and (i) the shareholder discount and complimentary benefits.*

2.6 The Applicant never agreed to or executed this document and remains in possession of the original unsigned agreement. Copy of the agreement dated 05.05.2023 is annexed as Exhibit-D to the Application.

2.7 Despite the Applicant's reservations, the CD, through persistent follow-ups and continued assurances from Mr. Vijay Avhad, sought interim financial support to meet immediate operational obligations. In response to these repeated urgencies and in good faith, the Applicant agreed to extend a loan of Rs. 3,36,00,000/- to the CD in three tranches, strictly as debt and not in the nature of any equity or hybrid instrument. The parties were fully aligned on the point that this funding was to be treated as a loan repayable at an interest of 18% p.a., as envisaged in the RFA. The disbursements were made as follows:

i. Rs. 1,00,00,000/- on 05.05.2023 from the sole proprietorship account of the Financial Creditor (Rotek Engineers) to the Corporate Debtor;

ii. Rs. 1,11,00,000/- on 09.05.2023 from the sole proprietorship account of the Financial Creditor (Rotek Engineers) to the Corporate Debtor; and

iii. Rs. 1,25,00,000/- on 07.06.2023 from the personal account of the Financial Creditor to the Corporate Debtor. Copy of the bank statements annexed as Exhibit-E to the Application.

2.8 Subsequently, the parties re-engaged in discussions for a potential equity investment, strictly subject to the outcome of financial and legal due diligence. The Applicant sought details regarding trade receivables, sundry creditors, investments, liabilities, GST compliance, ROC filings, and litigation exposure *vide* email dated 19.06.2023. The CD responded *vide* email dated 07.07.2023 and sent certain documents to the

Applicant. Upon scrutiny of those documents, the Applicant found substantial and troubling discrepancies in the CD's disclosures. The critical issue observed were:

i. Inflated receivables and doctored payment statements;
ii. Artificially overstated inventory (e.g. Rs. 4 crore declared against negligible actual stock);
iii. Non-disclosure of ROC issues and pending legal compliances;
iv. Inaccurate or incomplete GST returns and non-disclosure of litigation under CGST Act;
v. Failure to disclose cheque dishonour complaints under Section 138 of the NI Act;
vi. Unusual entries in the 2021-22 balance sheet without documentation;
vii. Absence of the FY 2022-23 audited balance sheet within the statutory timeline.

2.9 These findings led the Applicant to unequivocally decide against any equity investment in the CD. This decision was duly communicated to the CD. Even in the CD's provisional balance sheet as on 31.01.2024, a sum of Rs. 2,11,00,000/- was clearly acknowledged as loan from the Applicant. However, in a surprising and fraudulent accounting manoeuvre, the remaining amount of Rs. 1,25,00,000/- was shown under "Share Capital" despite the fact that the authorised capital of the CD stood at only Rs.2,00,00,000/-; no board or special resolution was passed increasing the Authorised Share Capital; no statutory filings were made with the RoC; no escrow account was opened as required under the Companies Act for share application money; no shares ever allotted. Thus, the CD blatantly violated corporate and financial regulations to disguise a portion of the admitted loan as share capital, clearly in an attempt to evade

repayment. This was confirmed when the CD, through email dated 07.02.2024, provided the said provisional balance sheet.

2.10 The Applicant issued a legal notice dated 26.07.2024 through its Advocate calling upon the CD to repay the principal loan amount of Rs. 3,36,00,000/- with interest @15% p.a. up to the date of repayment. The said notice explicitly reiterated that the amount was disbursed as a loan, not as investment or share application money. It detailed the fraudulent actions of the CD in misclassifying part of the loan as share capital, despite no underlying agreements or statutory compliance.

2.11 Upon receiving no response, a second legal notice dated 27.08.2024 was issued reiterating the default and once again demanding repayment. At no point did the CD disputed the loan transaction or deny its liability. Its continued silence and inaction, despite repeated notices, only serves to affirm its default and admission of liability.

2.12 Further, in multiple WhatsApp messages exchanged between the Director of the CD, Mr. Vijay Avhad, and the Applicant, Mr. Dharmendra Sheth (proprietor of Rotek Engineers), the Director explicitly admitted the outstanding dues, acknowledged the financial distress faced by the company, and sought additional time for repayment. The tone and content of the messages clearly reflect the CD's acceptance of the loan as debt, and a promise to repay. There was no claim of equity or share application money made in those conversations. The messages were consistent with the narrative that the amount was never treated as an investment. The Applicant has retained certified screenshots of the WhatsApp messages. The Applicant craves leave to produce and refer the same as and when required.

2.13 The CD, in its Annual Return and Annual Report for the Financial Year 2023-2024, fraudulently and unilaterally classified the entire loan amount of Rs. 3,36,00,000/- as "Share Application Money" in its books of accounts. This mischaracterization was

done ‘without the consent, knowledge, or participation of the Applicant, and is in blatant violation of the provisions of the Companies Act, 2013 and the applicable RBI Guidelines.

2.14 The CD did not execute any share subscription agreement, pass the necessary board or shareholders’ resolutions, file the requisite returns or forms with the Registrar of Companies, open a designated escrow account, or increase its authorized share capital to accommodate such a transaction. The Applicant had neither applied for nor consented to any such equity participation. Therefore, this unilateral and false representation of the loan amount as share application money is nothing but a deliberate and calculated attempt to evade liability for the substantial financial dues admittedly owed to the Applicant.

2.15 The Statutory Auditor of the CD, M/s M.S. Mohite & Co., Chartered Accountants, failed to raise any objections or qualifications in the audit report, thereby tacitly endorsing the CD’s patently unlawful conduct. This serious omission raises grave concerns about the auditor’s professional independence and points to a clear collusion between the CD and its auditor to mislead stakeholders and suppress the true nature of financial obligations. Therefore, the Applicant was constrained to issue a formal legal notice dated 15.05.2025 to the Statutory Auditor, calling out the misconduct, gross negligence, and abdication of professional duty in violation of the provisions of the ICAI Code of Ethics, applicable standards of auditing, and the Companies Act, 2013.

2.16 It is submitted that the Applicant has attached Form-C NeSL record of default.

2.17 The date of default is mentioned as 03.08.2024.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 The CD filed Affidavit-in-Reply dated 06.10.2025, which is affirmed by Mr. Vijay Avhad – Authorised Representative and Managing Director of the CD.

3.2 The CD in its reply states that the Application is not maintainable as the Applicant does not fall under the ambit of Section 5(7) of Code. It is submitted that the investment agreement clearly states that the proposed transaction is an equity investment. Pursuant to the agreement, the Applicant made disbursements of Rs. 1,00,00,000/- (first disbursement), Rs. 1,11,00,000/- on 09.05.2023 (second disbursement) and Rs. 1,25,00,000/- on 07.06.2023 (third disbursement). Irrespective of the unsigned agreement, the Applicant disbursed the amount.

3.3 It is stated by the CD that the Applicant falls under the category of a Shareholder and not a financial creditor and therefore cannot be permitted to lodge a petition under Section 7 of the Code. The same is substantiated by the provisional balance sheet of the CD attached to the Application which displays the amount invested by the Applicant.

3.4 Further, it is stated that the Annexure A which is attached to the Investment Agreement, which lays down the rights allocated to the Applicant in the capacity of a shareholder. The CD relies on the judgment of Ld. NCLT, Mumbai Bench in the case *Hubtown Limited vs. GVFL Trustee Company Pvt. Ltd*., [MA 2412/2019] in CP(IB)-4I29/2018, to substantiate that the Applicant will be considered as a shareholder and not a financial creditor. The CD also places reliance on the judgment of Hon'ble NCLAT in *Clarion Health Food LLP vs. Goli Vada Pav Pvt. Ltd*., Company Appeal (AT) (Ins.) No. 1522 of 2023, where it was held that, Shareholders or Investors in the Corporate Debtor cannot be treated as person aggrieved under the Code. The Appellate Tribunal rendered the appeal dismissed and not maintainable.

3.5 The CD states that the Investment involved does not meet the criteria under Section 5(8) of the Code. The Hon'ble Supreme Court of India, in the case *Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd*., (2021) 3 SCC 475, emphasised that the

essential ingredient of a financial debt is disbursal against consideration for the time value of money. In the present case, due to the dynamic nature of equity, the same cannot be categorized under the abovementioned definition of financial debt.

3.6 The final balance sheet as on 31.03.2024 of the CD displays the funds invested as "Share Application Money". The final Balance Sheet is attached as Exhibit V to the Reply. Since the inception, the nature of the investment was intended to be and has always remained equity, and it cannot be altered to financial debt of any kind.

3.7 Hon'ble NCLAT, New Delhi, in the case of Pramod Sharma vs Karanaya Heart Care Pvt. Ltd. Comp. App. (AT) (Ins.) No. 426 of 2022, the decision of the Adjudicating Authority was upheld, stating that Share Application Money cannot be considered financial debt in order to gain the locus to file an application under Section 7 of the Code. Further, the Hon'ble Supreme Court in the case of *Radha Exports (India) Private Limited vs. KP Jayaram and Anr*., (2020) 10 SCC 538, held that Applicants filing a petition under Section 7 of the Code must adduce *prima facie* evidence to show legally recoverable financial debt. The Hon’ble Court reiterated the definition of financial debt by stating that financial debt means a debt along with interest, if any, disbursed against the consideration for time value of money and would include money raised or borrowed against payment of interest. Further, the Apex Court finally held that Share Application Money cannot be considered as Financial Debt under the Code. Considering the aforementioned precedents, it is evident that the Applicant's claim is frivolous and infructuous.

4. REJOINDER

4.1 The Applicant filed the rejoinder through an Affidavit dated 17.11.2025.

4.2 Applicant submits that from Exhibit E (Pg.no 35) of the Application it is reflected that the Applicant has transferred the funds to the CD. The contention of the CD that the

funds advanced by the Applicant was in the nature of Share Application Money is wholly misconceived for the following reasons:

i. Absence of a binding agreement: There was no Shareholding Agreement or Subscription Agreement executed between the parties.

ii. Absence of definitive Agreement: Even assuming, without admitting, that such an agreement existed, Clause 13 of the said document explicitly states that the parties were to execute Definitive Agreements, including a Share Subscription Agreement and a Shareholders Agreement, to give effect to any proposed transaction. No such definitive agreements were ever executed. Accordingly, even by the CD's own showing, the alleged transaction never crystallised into any binding arrangement for subscription of shares.

iii. Violation of statutory requirements: The Companies Act, 2013, particularly Section 42, prescribes a mandatory procedure for private placement or receipt of share application money. This includes the issuance of a formal offer, acceptance thereof, opening of a designated escrow account, deposit of monies in such account, and allotment of shares within 60 days of receipt. Further, Section 42(6) explicitly provides that monies raised through private placement shall not be utilised for any purpose other than the allotment of securities or repayment to the applicant if allotment cannot be made. In the present case, no offer for subscription was made, no acceptance was communicated, no escrow account was opened, and no shares were allotted. Instead, the Corporate Debtor diverted the funds towards its

working capital requirements, thereby breaching the provisions of the Companies Act, 2013.

iv. Exceeding authorised capital: The Authorised Share Capital of the CD is Rs.2,00,00,000/-, which is already fully subscribed. Even assuming that the funds were intended towards share subscription, no company can accept share application money beyond its authorized capital without first increasing the same by following due process under Section 61 of the Companies Act. Thus, even on the CD's own case, the alleged transaction would be void ab initio and ultra vires the Act.

4.3 It is submitted that the CD was in urgent need of working capital to fund its ongoing projects and its business expansion, the CD approached the Applicant, through Mr. Arpan Shah. A meeting was held in mid-February 2023 between the Applicant and Mr. Vijay Avhad, Director of the CD. During the meeting, Mr. Vijay Avhad requested for urgent financial assistance to address the liquidity issues faced by the Corporate Debtor in completing its EPC contract and also to support its expansion plan. Thereafter, the CD sent a proposal RFA document seeking infusion of funds.

4.4 With regard to the due diligence contention of the CD, the Applicant submits that any lender requires financial due-diligence to confirm repayment capacity, so the process cannot be characterized as equity-oriented. Although some documents were shared via email, the due-diligence remained incomplete and continued after the debt amount was transferred, as numerous irregularities and inconsistencies were found in the CD's accounts.

5. ANALYSIS AND FINDINGS

5.1 We have heard the Ld. Counsels for the Applicant and the CD and have perused the records as placed before us. Our findings in the matter are as under: -

5.2 The principal issue which arises for consideration in the present Application is whether the amount of Rs. 3,36,00,000/- advanced by the Applicant to the CD constitutes a “Financial Debt” under Section 5(8) of the Code or whether the same was merely “Share Application Money” towards a proposed equity investment, as contended by the CD.

5.3 The CD has not disputed receipt of the amounts transferred by the Applicant in three tranches i.e. Rs.1,00,00,000/- on 05.05.2023, Rs.1,11,00,000/- on 09.05.2023 and Rs.1,25,00,000/- on 07.06.2023.

5.4 The dispute essentially pertains to the nature and character of the said transaction. The case of the Applicant is that the CD had approached the Applicant seeking urgent financial assistance for working capital requirements and business expansion and, based on the representations made by the CD and its Director, the Applicant extended temporary financial support carrying interest @18% p.a. The Applicant further submits that although discussions regarding a possible future equity participation were initiated, the same never culminated into a concluded or binding transaction.

5.5 On the other hand, the CD has contended that the transaction was always intended to be an equity investment and the amount was therefore treated as “Share Application Money” in its books of account and balance sheets.

5.6 In order to determine the true nature of the transaction, this Tribunal must examine not merely the nomenclature used subsequently in the balance sheets, but the surrounding circumstances, contemporaneous documents, conduct of parties and statutory compliances governing equity subscription transactions.

5.7 At the outset, it is pertinent to note that the Agreement dated 05.05.2023 relied upon by the CD itself does not create any concluded investment arrangement. Clauses 10 and 13 of the said Agreement specifically provide that the proposed transaction

structure was preliminary in nature and that the parties were required to execute definitive agreements, including a Share Subscription Agreement and Shareholders Agreement, before any investment transaction could attain finality.

5.8 Significantly, the said Agreement admittedly does not bear the signature of the Applicant. Even otherwise, the clauses relied upon by the CD clearly indicate that further negotiations and execution of definitive agreements were contemplated before any equity participation could crystallize.

5.9 Admittedly, the CD has not placed before us any Share Subscription Agreement, Shareholders Agreement or share application form or any definitive binding document duly signed by the Applicant here or executed between the parties. As such no material has been placed on record by the CD to establish that the Applicant ever consented to subscribe to shares of the CD.

5.10 Further, the documents on record reveals to us that the Applicant had undertaken due diligence of the CD after disbursement of the amounts and, upon discovering several financial and statutory irregularities, decided against proceeding with the proposed equity participation. The emails exchanged between the parties and the pleadings on record support the Applicant's contention that discussions relating to equity investment remained incomplete and inconclusive.

5.11 This Tribunal also finds substance in the Applicant's contention regarding non-compliance with the mandatory provisions governing private placement and receipt of share application money under the Companies Act, 2013.

5.12 For better appreciation, it would be useful to refer to the legal position governing "Share Application Money" and "Private Placement". Share Application Money is an amount received by a company from a proposed investor pursuant to a legally valid offer for subscription of shares pending allotment thereof. Such transaction is

regulated by Section 42 of the Companies Act, 2013 dealing with private placement of securities. A valid private placement transaction under Section 42 of the Companies Act requires compliance with several mandatory conditions including:

i. issuance of a private placement offer letter to identified persons;
ii. acceptance of the offer by the proposed subscriber;
iii. receipt of monies through banking channels in a designated account;
iv. allotment of securities within the prescribed period;
v. filing of statutory returns with the Registrar of Companies.

It is an admitted position that no such documents have been placed before us by the CD to support his contention.

5.13 Section 42(6) of the Companies Act further provides that where allotment is not completed within sixty days from receipt of application money, the company is under a statutory obligation to refund the money within the prescribed timeline. In the present case, the CD has failed to place any material on record to establish compliance with the aforesaid statutory requirements. There is no evidence of:

i. issuance of any private placement offer letter;
ii. acceptance by the Applicant for subscription of shares
iii. opening of a separate bank account for share application money;
iv. allotment of shares to the Applicant;
v. filing of PAS-3 or other statutory forms before the Registrar of Companies;
vi. execution of definitive agreements governing equity participation.

5.14 Further, the Applicant has specifically pointed out that the authorised share capital of the CD was only Rs.2,00,00,000/- and no steps were taken by the CD to increase the authorised share capital in accordance with Section 61 of the Companies Act. This

contention has not been satisfactorily rebutted by the CD. Thus, even assuming that there were preliminary discussions regarding equity participation, the alleged transaction never matured into a legally valid share subscription arrangement in the eyes of law. It is also significant that the CD admittedly utilised the amounts for its business and operational requirements. The utilisation of funds for working capital requirements, coupled with absence of allotment and statutory compliance, militates against the contention that the amount retained its character as genuine share application money indefinitely.

5.15 The Applicant has further placed reliance upon WhatsApp communications and legal notices wherein the CD sought time for repayment and acknowledged financial difficulties.

5.16 Prima facie, the conduct of the CD reflects, through such communications appears as towards acknowledgment of repayment obligations rather than existence of an equity investment between the parties.

5.17 Merely because the CD subsequently reflected the amount as “Share Application Money” in its balance sheet would not by itself conclusively determine the nature of the transaction. It is settled law that accounting treatment cannot override the actual substance of a transaction, particularly when statutory compliances necessary for creation of an equity relationship are absent.

5.18 The judgments relied upon by the CD relating to share application money are distinguishable on facts. In those cases, the transactions were genuine equity subscriptions or the amounts were demonstrably linked with allotment of shares. In the present case, admittedly no shares were ever allotted, nor were statutory requirements for private placement complied with.

5.19 The material placed on record indicates that:

i. monies were admittedly disbursed by the Applicant to the Corporate Debtor;

ii. the disbursement was for business and working capital requirements of the Corporate Debtor;

iii. the transaction contemplated repayment with return/interest;

iv. the alleged equity transaction never attained finality;

v. no shares were allotted to the Applicant till date.

5.20 In view thereof, this Tribunal is of the considered opinion that the amount advanced by the Applicant cannot be treated as perpetual “Share Application Money”. Once the proposed equity transaction failed to materialize and no allotment was made in accordance with law, the amount retained by the Corporate Debtor assumed the character of a debt repayable to the Applicant.

5.21 The requirement of “time value of money” under Section 5(8) of the Code also stands satisfied in the present case. The Request for Financial Assistance/Arrangement (RFA) itself contemplated debt funding carrying return at 18% p.a. Thus, the disbursement had the commercial effect of borrowing.

5.22 It is an admitted fact that the CD needed financial assistance and approached the Applicant for financial facilities in the form of equity and debt form. The CD issued a formal RFA (Page nos. 26-27) to the Applicant wherein the RFA elaborated the total investment of Rs. 500 lakhs and other financial projections, including the interest of 18% p.a. on debt funding and dividend return of 20% on equity investment. An agreement was executed in relation to the above borrowing, which was unsigned and unstamped by the Applicant. Thereafter, the Applicant disbursed an amount of Rs.3,36,00,000/- on different occasions which are mentioned above and this disbursement was solely treated as loan repayable at an interest of 18% p.a. The disbursement is not disputed by the CD.

5.23 The Applicant sought details regarding trade receivables, sundry creditors, investments, liabilities, GST compliance, ROC filings *vide* an email dated 19.06.2023 to which the CD *vide* an email dated 07.07.2023 sent certain documents and upon scrutiny of these documents the Applicant found substantial discrepancies. Therefore, the Applicant duly communicated the CD that the amount advanced to the CD is strictly a loan with repayable agreed interest.

5.24 The Applicant issued legal notices dated 26.07.2024 and 27.08.2024 reiterating that the amount advance was a loan and demanding payment. The CD did not reply to these legal notices.

5.25 The parties had exchanged WhatsApp messages, wherein the Director of the CD admitted the outstanding dues and sought additional time for repayment.

5.26 It is agreed that the CD did not execute any share subscription agreement, pass the necessary board or shareholders' resolutions, file the requisite returns or forms with the Registrar of Companies, open a designated escrow account, or increase its authorized share capital to accommodate such a transaction.

5.27 The Applicant has stated the date of default as 03.08.2024. It is seen that the Application is filed on 04.08.2025 which is within the limitation period.

5.28 The Applicant has placed on record the NeSL record of default in Form C.

5.29 The Applicant has filed a purshish dated 29.05.2026 stating no objection to appoint IRP from the panel of RPs. This Tribunal appoints Mr. Krishna Gopal Ratanlal Maheshwari to act as the Interim Resolution Professional (IRP) having valid AFA valid till 31.12.2026.

5.30 This Tribunal places reliance on the judgment of ***Hon'ble Supreme Court in Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan, IRP of Hiranmaye Energy Ltd. and Ors. [Civil Appeal No(s). 2211/2024 decided on 18.02.2026]*** 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. <u>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):</u>

"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 WBSEDCL 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)

5.31 To summarize the above judgment, we observe as under: -

a. The Code prescribes whenever a corporate debtor defaults on a debt that is due and payable, an insolvency process must be initiated. Section 3(12) defines "default" as non-payment of a debt which has become due and payable, and includes default in respect of a part or instalment thereof.

b. When the financial creditor initiates the insolvency process for the purposes of admission, the Adjudicating Authority is only to ascertain the existence of a default from the records of the information utility or the evidence

furnished by the financial creditor within fourteen days from the receipt of such application. At this stage, neither is a corporate debtor entitled nor is the Adjudicating Authority required to examine any dispute regarding the existence of such debt. This significantly reduces the scope of enquiry at the stage of a time-bound admission of an insolvency process by a financial creditor.

c. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5).

d. The Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt.

e. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more.

5.32 Thus, it is clear from perusal of the record that an amount of more than the threshold limit of Rs.1 Crore under Section 4 of the Code, was due and payable by the CD to the Applicant. Hence, we find that the Applicant has been able to substantiate the existence of a financial debt due and payable by the CD which remained unpaid. The debt so owed by the CD to the Applicant falls within the definition of “financial debt” under Section 5(8) of the Code.

5.33 In view of the above, we find that requisite conditions necessary to trigger CIRP in respect of the CD are fulfilled, the Application is complete as all the relevant

documents have been attached by the Applicant along with the Application. As a result, the matter deserves to be admitted under Section 7 of the Code.

5.34 At this stage we are not quantifying the exact amount under default, which the IRP will do. We are satisfied that there exists a debt which is in default in excess of Rs. 1 Crore.

ORDER

In view of the aforesaid findings, Application bearing C.P.(IB) No.782/MB/2025 filed under Section 7 of the Code by Dharmendrakumar Sumatichandra Sheth (Sole Proprietor of M/s Rotek Engineer), the Applicant, for initiating CIRP in respect of **M/S Galaxy IEC India Private Limited**, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of the Code 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 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in 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 Code 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 in immediately as specified under Section 13 of the Code 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. Krishna Gopal Ratanlal Maheshwari** a registered Insolvency Professional having Registration Number **IBBI/IPA-001/IP-P-01296/2019-2020/12712** and e-mail address 1kgmaheshwari@gmail.com having valid Authorisation for Assignment up to 31.12.2026 as the IRP to carry out the functions under the Code.

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 Code. The officers and managers of the Corporate Debtor are directed to provide effective 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 Code 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 Applicant is directed to deposit a sum of Rs.3,00,000/- (Rupees Three Lakh) 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 Applicant on priority upon the funds 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 Applicant, 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)

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

//VM//