



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P1.

C.P. (IB)/729(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **12.12.2025**

NAME OF THE PARTIES: **Tata Capital Housing Finance Limited**

Vs.

Dharan Infra-EPC 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/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

C.P. (IB)/729/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]*

IN THE MATTER OF:

TATA CAPITAL HOUSING FINANCE LIMITED

[CIN No.: U67190MH2008PLC187552]

11th Floor, Tower A, Peninsula Business Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400013.

...Financial Creditor/Applicant

V/s

DHARAN INFRA-EPC LIMITED

[CIN No.: L45400MH2007PLC174194]

2nd Floor, Gulmohar Status above,
Business Bank, Samarth Nagar, Nashik,
Mumbai – 422005.

...Corporate Debtor

Pronounced: 12.12.2025

CORAM:

HON'BLE SHRI NILESH SHARMA, MEMBER (JUDICIAL)

HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)

Appearances: Hybrid

For Financial Creditor: Adv. Mr. Sanjeev Singh a/w Adv. Ms. Anshita Argal

For Corporate Debtor: Adv. Swapnil Balajiwale



ORDER

[PER: CORAM]

1. BACKGROUND

- 1.1 This C.P. (IB) No.729/MB/2025 (Application) was filed on 31.05.2025 by Tata Capital Housing Finance Limited, the Financial Creditor (FC), having CIN No.: U67190MH2008PLC187552 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, for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Dharan Infra-EPC Limited, the Corporate Debtor (CD) having CIN No.: L45400MH2007PLC174194.
- 1.2 As per Part IV of the Application, the amount claimed to be in default as on 20.05.2025 is Rs.28,04,91,115/- (Rupees Twenty – Eight Crore Four Lakh Ninety-One Thousand One Hundred Fifteen Rupees Only).
- 1.3 In Part IV, the date of default is stated as 07.02.2023 for the facility.
- 1.4 The FC has proposed Mrs. Palak Swapnil Desai, having Registration No. IBBI/IPA-001/IPP01517/2019-2020/12515, to act as the Interim Resolution Professional (IRP).

2. CONTENTIONS OF APPLICANT (FC)

- 2.1 The CD had approached the FC in 2018, seeking financial sanction of a Construction Finance Facility amounting to Rs. 35,00,00,000/-. The said facility was duly sanctioned by the FC vide sanction letter dated 17.12.2018, with an addendum thereto issued on 15.12.2020.



2.2 In the year 2019, the CD sought an additional Construction Finance Facility of Rs. 45,00,00,000/-, which was sanctioned by the FC vide sanction letter dated 20.05.2019. An addendum to this sanction letter was issued on 07.03.2022.

2.3 The details of the loan and its disbursements are mentioned below –

Sanction Date:	17.12.2018
Amount Sanctioned:	Rs. 35,00,00,000
Disbursal Date:	In tranches on multiple dates as given in below Table-1
TABLE - 1	
Tranche/Amount (Rs.)	Date
1 st Tranche – 20,00,00,000/-	22.12.2018 29.06.2019
2 nd Tranche – 15,00,00,000/-	31.12.2020 04.05.2021 08.06.2021 25.06.2021 06.07.2021 29.07.2021 11.08.2021 08.10.2021
Sanction Date:	20.05.2019
Amount Sanctioned:	Rs. 45,00,00,000
Disbursal Date:	In tranches on multiple dates as given in below Table-2
TABLE-2	
Tranche/Amount (Rs.) against the sanctioned amount of Rs. 45 crores only following disbursements amounting to Rs. 34.40 crores were made.	Date
1 st Tranche Rs. 20,00,00,000/-	31.05.2019
2 nd Tranche	31.05.2019



Rs. 5,00,00,000/-	27.07.2019 15.06.2020
3 rd Tranche Rs. 3,00,00,000/-	28.07.2019 30.11.2019 12.11.2020
4 th Tranche Rs. 6,80,00,000/-	11.04.2022 02.02.2023

Copy of the facility agreement dated 17.12.2018, Sanction letter dated 17.12.2018 with Addendum Sanction letter dated 15.12.2020 and Facility Agreement dated 30.05.2019 are attached as Annexure P-6, P-7 and P-8 respectively.

- 2.4 The amount of financial debt due to the FC is to the tune of Rs. 28,04,91,115/- (Twenty – Eight Crore Four Lakh Ninety-One Thousand One Hundred Fifteen Rupees Only) as on 20.05.2025 under loan account numbers 10701594,10674762 and 10705544.
- 2.5 The Date of Default stated by the FC is 07.02.2023.
- 2.6 The CD committed the First default on 09.03.2020, when it failed to make the payment of EMI of Rs. 3,38,963/- due for February 2020. The CD irregularly and intermittently made some delayed and partial payments.
- 2.7 The loan account of the CD was classified as NPA on 07.02.2023, which is also the date of default taken by the FC.
- 2.8 That even after the CD's accounts were declared as NPAs the CD made partial and irregular payments.
- 2.9 That in accordance with Section 19 of the Limitation Act, each payment triggers a fresh limitation period, consequently, the present Application falls within the prescribed three – year limitation period.



2.10 The FC has attached the following documents along with the Application dated 26.06.2025:

- a) Copy of the certificate of Incorporation of the Financial Creditor.
- b) Copy of the Master Data of Financial Creditor as available on the website of the Ministry of Corporate Affairs.
- c) Copy of the Power of Attorney authorizing Mr. Kamendra Rajput to submit the present application on behalf of the Financial Creditor.
- d) Copy of the Master Data as available from the website of the Ministry of the Corporate Affairs of the CD.
- e) Copy of Original written communication by proposed Interim Resolution Professional in Form 2 along with certificate of registration and authorisation for assignment.
- f) Copy of facility agreement dated 17.12.2018.
- g) Copy of Sanction Letter dated 17.12.2018 and Addendum Sanction Letter dated 15. 12.2020.
- h) Copy of facility agreement dated 30.05.2019.
- i) Copy of Sanction Letter dated 20.05.2019 and Addendum Sanction letter dated 07.03.2022.
- j) Copy of the Registered Simple Mortgage Deed dated 19.12.2018 03.07.2019 and Supplementary Mortgage Deed dated 24.12.2020.
- k) Copy of record of default with National E-Governance Services Limited.
- l) Copy of Guarantee Deed dated 23.12.2020 and 30.12.2020 in favour of the Corporate Debtor.
- m) Copy of the Statement of Account and foreclosure letter of the Loan Accounts of the Corporate Debtor with Financial Creditor.



- n) Copy of the Demand Notices dated 26.04.2023 under section 13(2) of the SARFAESI ACT, 2002.
- o) Copy of Reply dated 20.05.2023 sent by Corporate Debtor explicitly acknowledged its liability, reaffirming the existence of a continuing debt.
- p) Copy of Additional Affidavit dated 02.10.2023 filed by the Corporate Debtor in Commercial Arbitration Petition No. 21294 of 2023, acknowledging its debt towards the Financial Creditor.
- q) Copy of emails sent by the Corporate Debtor for the proposal of settlement, along with attachments of email.

3. CONTENTIONS OF CD

- 3.1 An Affidavit-in-Reply dated 25.09.2025 to the original Application was filed by the CD, affirmed by one Mr. Naresh Jagumal Karda, Managing Director of the CD and its authorized representative.
- 3.2 The CD denies all the claims made by the FC and states that it deserves to be dismissed summarily. That the FC has suppressed material facts from the Hon'ble Tribunal and approached with unclean hands.
- 3.3 Dharan Infra EPC Limited (formerly known as "Karda Constructions Limited" and "KBC Global Limited") is engaged in the real estate construction, development, civil contracts, and other related activities in India. The company constructs and develops residential and commercial projects. It has an established brand and reputation and a track record of developing innovative projects through its emphasis on contemporary architecture strong project execution and quality construction in the real estate industry.



- 3.4 The FC sanctioned the loan of Rs 35,00,00,000/- through sanction letter dated 17.12.2018 towards CD in two tranches. The FC further sanctioned a credit facility of Rs. 45,00,00,000/- by way of sanction letter dated 20.05.2019 for the purpose of project construction funding. Copies of the Sanction Letter dated 17.12.2018 and 20.05.2019 are attached as Annexure P-7 and P-9 of the Application.
- 3.5 The CD and the FC executed a facility agreement dated 30.05.2019 with respect to sanctioned loan amount of Rs. 45 Crores, a simple mortgage deed dated 03.07.2019, whereby units of the projects were mortgaged as a security towards the said loan amount. A Deed of Guarantee dated 15.06.2019 and a Supplementary Mortgage Deed dated 24.12.2020 were also executed.
- 3.6 The Loan Account of the CD was classified as a Non-Performing Asset on 07.02.2023 and therefore the FC had issued a demand notice dated 26.04.2023 u/s. 13(2) of the SARFAESI Act, 2002 as against an outstanding amount of INR 9,77,63,325/-. A copy of the notice dated 26.04.2023 issued by the Financial Creditor u/s 13(2) of the SARFAESI Act, 2002 is attached as an Exhibit – B in Reply. Further the Financial Creditor issued another demand notice dated 26.04.2023 u/s 13(2) of the SARFAESI Act, 2002 to the CD as against an outstanding amount of INR 11,60,72,840.72. A copy of the demand notice dated 26.04.2023 issued by the Financial Creditor u/s 13(2) of the SARFAESI Act, 2002 is attached as an Exhibit – C in Reply.
- 3.7 The CD on various occasions requested and sought permission from the FC with respect to sale of units in the project namely Hari Laxmi and Hari Krishna Phase IV, which were mortgaged with the FC by way of a simple



mortgage deed dated 03.07.2019. The FC considered the request and granted a No Objection Certificate to sell the units mortgaged on a condition that the mortgage/charge over the said units shall continue unabated till such time the entire sale proceeds / sale consideration received from the purchaser or paid on behalf of the purchaser is received in the Escrow Accounts held with the ICICI Bank, Nashik Road, Nashik Branch. Copies of NOC with respect to flats units in Hari Laxman and Hari Krishna Phase IV granted by the Financial Creditor are attached as an Exhibit – D in Reply.

3.8 CD obtained No Objection Certificates (NOCs) from the FC for the sale of certain flats units mortgaged against the loan. After obtaining these NOCs, the sale proceeds of those units were deposited into an escrow account maintained with ICICI Bank, Nashik Branch, and the balance amounts were deposited into the CD's loan account. These amounts were thereafter appropriated by the FC towards the outstanding loan.

3.9 The CD states that it was shocked to note that the very same flat units—whose NOCs had been granted and whose full sale consideration had been received by the FC—were again shown as mortgaged assets in the demand notice dated 26.04.2023 issued by the FC under Section 13(2) of the SARFAESI Act, 2002. The FC had received the entire sale consideration from the original purchasers and therefore, the said units no longer formed part of the mortgage. A chart of such units (Exhibit E) and ledger statements reflecting total payments of ₹29.84 crores made by the CD (Exhibit F) have been annexed in Reply.

3.10 The CD states that the FC issued possession notices dated 06.07.2023 and 18.07.2023 under Section 13(4) of the SARFAESI Act read with Rule 8 of



the Security Interest (Enforcement) Rules, 2002, in respect of units in Harish Sparsh-IV, Hari Krishna Phase-IV and Hari Laxmi projects. Public notice dated 12.07.2023 was also issued (Exhibit G in Reply).

3.11 The CD submits that due to severe market downturn and financial crisis, it faced difficulties. However, it has received fresh bookings for mortgaged units for which NOCs have not been granted. The CD submits that if the FC issues NOCs for the remaining units, the CD will be able to sell them and deposit the proceeds in the escrow/loan accounts towards repayment. The CD asserts that the projects mentioned in the demand notices are under active construction and are progressing steadily.

3.12 The CD further states that it has instituted proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, by filing Commercial Arbitration Petition No. 21294 of 2023 before the Hon'ble High Court, seeking injunction against the FC from attaching or auctioning the mortgaged units in Hari Laxmi and Hari Krishna-IV projects. This petition concerns the same transaction and the same claim amount forming the subject matter of the present Section 7 IBC petition. The pendency of this arbitration-related proceeding has been expressly admitted by the FC in the Company Petition.

3.13 The CD submits that since substantial disputes arising from the same transaction are already pending before the Hon'ble High Court, the present Section 7 petition is not maintainable. Reliance is placed on ***K. Kishan v. Vijay Nirman Company Pvt. Ltd. (2018) 17 SCC 662***, wherein the Hon'ble Supreme Court held that the existence of arbitration proceedings indicates a pre-existing dispute, rendering IBC proceedings inappropriate. The CD also relies on '***Vidarbha Industries Power Limited v. Axis Bank Limited***,



(2022) 8 SCC 352, wherein the Hon'ble Supreme Court held that the Adjudicating Authority has discretion not to admit a Section 7 application if other judicial proceedings involving the same claim are pending or where circumstances warrant withholding admission.

3.14 It is therefore the CD's case that the Section 7 petition is an abuse of process, not maintainable in law, and liable to be dismissed since the dispute is already sub judice before the Hon'ble High Court, Mumbai, and cannot be adjudicated summarily under the IBC.

3.15 The CD has attached the following documents along with the Reply dated 25.09.2025:

- a) Copy of Board Resolution dated 12.07.2025.
- b) Copy of the notice dated 26.04.2023 issued by the Financial Creditor u/s 13(2) of the SARFAESI Act, 2002.
- c) A copy of the demand notice dated 26.04.2023 Financial Creditor u/s 13(2) of the SARFAESI Act, 2002.

4. REJOINDER (FC)

4.1. Rejoinder was filed by the FC on 30.09.2025 in compliance with the order dated 23.09.2025, in response to the Affidavit in Reply filed by the CD dated 18.09.2025.

4.2. That at the outset, the FC denies contentions set forth by the CD in its reply dated 18.09.2025.

4.3. That the objections and defences taken by the CD can in no manner be considered as valid legal defences in the eyes of law. The FC seeks liberty of this Hon'ble Tribunal to rely upon and reiterate the contents of the petition



filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, and the same may be read as part and parcel of this rejoinder and are not reproduced herein to avoid repetition.

- 4.4. It is submitted by the FC that Commercial Arbitration Petition No. 21294 of 2023 has been filed by the CD only for interim protection in respect of secured assets mortgaged with the FC. No arbitral proceedings have been initiated by the CD. Hence, proceedings under Section 9 of the Arbitration Act have no bearing on the maintainability or adjudication of this Section 7 petition. Even if such proceedings had been initiated, there is no bar under the Code to the initiation or maintainability of a Section 7 petition.
- 4.5. That the Hon'ble NCLAT in ***Century Aluminium Co. Ltd. v. Religare Finvest Limited, 2024 SCC Online NCLAT 1242***, has categorically held that pendency of arbitration proceedings, whether prior to or subsequent to the filing of a Section 7 petition, is immaterial. The relevant extract is reproduced below:

The fact that whether Arbitration Proceedings are pending on the date when Section Application is filed or it is sought to be initiated subsequent to filing of Section 7 Application is immaterial. The remedy under Section 7 is a special remedy, keeping the object and purpose of the IBC Code. When it is brought in the notice of the Adjudicating Authority that a Corporate Debtor needs a resolution it having committed default in payment of debt, the Court is obliged to consider the Section 7 Application to find out as to whether there is a debt and default. The Insolvency Resolution of a Corporate Debtor which needs Insolvency Resolution can await adjudication of Arbitration Proceedings nor the Application under



Section 7 can be kept pending till the adjudication of Arbitration Proceeding is completed.

- 4.6. The CD reliance on the judgment of the Hon'ble Supreme Court in ***K. Kishan v. Vijay Nirman Company Pvt. Ltd., (2018) 17 SCC 662***, is wholly misplaced. That judgment pertains to Section 9 of the Code, where the absence of a *pre-existing dispute* is a condition precedent. The same principle does not apply to Section 7 petitions. For admission under Section 7, it is sufficient to establish the existence of a financial debt, occurrence of default, and that the petition is within limitation—all of which are satisfied in the present case.
- 4.7. Similarly, the CD placed reliance on ***Vidarbha Industries Power Limited v. Axis Bank Limited, (2022) 1 SCC 352***, which is also misplaced. The Hon'ble Supreme Court in ***M. Suresh Kumar Reddy v. Canara Bank, (2023) 8 SCC 387***, has clarified that Vidarbha Industries was rendered in its peculiar factual background and cannot be treated as a general principle overriding ***Innoventive Industries v. ICICI Bank (2018) 1 SCC 401*** or ***E.S. Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd.*** The Hon'ble Supreme Court has reaffirmed that the position laid down in *Innoventive Industries* continues to prevail.
- 4.8. The CD has, on multiple occasions, expressly acknowledged its liability towards the FC. It has proposed a one-time settlement of the loan account (Annexure P-17, pages 450-454 of the Section 7 Application), which clearly establishes its admission of liability. Further, in its additional affidavit filed in Commercial Arbitration Petition No. 21294 of 2024 (Annexure P-16, pages 440-449), the CD has expressly admitted that an outstanding debt exists



and is due and payable to the FC. These acknowledgments conclusively demonstrate subsistence of debt and negate any attempt now made to dispute the liability. The objections raised are an afterthought and devoid of merit.

4.9. In its reply dated 20.05.2023 to the demand notice issued by the FC (Annexure P-15, pages 434-439), the CD categorically admitted that it had defaulted in repayment of the loan due to which its loan account was classified as NPA on 07.02.2023. In the same reply, it admitted the existence of outstanding debt. Having admitted both debt and default in its own communications, the CD cannot now dispute either the maintainability or admissibility of the present Section 7 petition.

4.10. In view of the foregoing, the objection raised by the CD is devoid of merit and not sustainable in law. As demonstrated, both the Hon'ble Supreme Court and the Hon'ble NCLAT have consistently held that once the existence of debt and default is established, the Adjudicating Authority is duty-bound to admit a petition under Section 7. In the present case, the ingredients of debt, default, and limitation stand conclusively satisfied, and therefore the petition deserves to be admitted.

5. WRITTEN NOTE (FC)

5.1 Written Note was filed by the FC on 03.11.2025.

5.2 The FC submits that all three statutory conditions required for admission of a Section 7 petition stand satisfied. The existence of financial debt is established through multiple loan accounts under which an aggregate amount of Rs. 69,80,00,000/- was disbursed in various tranches. The



outstanding amount of Rs. 28,04,91,115/- is evidenced through the foreclosure letter and statement of account. The sanction letters, loan agreements, and registered mortgage deeds form part of the record.

5.3 Default is clearly established. The FC sanctioned two construction facility loans in 2018 and 2019, each disbursed in tranches with separate loan accounts created. The CD initially delayed EMI payments, thereafter failed to meet the repayment schedule, and made only partial intermittent payments. Owing to persistent non-payment, the loan accounts were classified as NPA on 07.02.2023, which constitutes the date of default. Reliance is placed on ***Milind Kashiram Jadhav v. State Bank of India & Anr., 2024 SCC OnLine NCLAT 534 (paras 53, 55, 62, and 74)***, wherein NCLAT (affirmed by the Supreme Court) held that NPA classification is a valid date of default under the Code. Record of default from NeSL is also on file.

5.4 The petition is well within limitation. The CD committed several delays in repayment leading to NPA classification on 07.02.2023, which itself constitutes a fresh trigger of default. In addition, the CD has repeatedly acknowledged its liability through:

- (a) Additional Affidavit in Arbitration Petition No. 21294 of 2023,
- (b) OTS proposal dated 22.10.2024, and
- (c) OTS proposal dated 25.10.2025.

5.5 Such acknowledgments constitute fresh limitation under Section 18 of the Limitation Act. Part-payments made by the CD also extend limitation under Section 19. Reliance is placed on ***Dena Bank v. C. Shivakumar Reddy,***



(2021) 10 SCC 330, which confirms that OTS proposals amount to acknowledgments of debt.

5.6 In response to the CD's objections, it is submitted that for Section 7 proceedings, the Adjudicating Authority is only required to determine existence of debt and default. Disputes raised by the CD are irrelevant if the debt is due and payable. Reference is made to *Innoventive Industries and E.S. Krishnamurthy* judgements.

5.7 The CD's contention regarding pendency of Arbitration Petition No. 21294 of 2023 is misconceived. The said proceeding only concerns interim relief under Section 9 of the Arbitration Act. Pendency or existence of arbitration does not affect maintainability of a Section 7 petition, as held in ***Century Aluminium Co. Ltd. v. Religare Finvest Ltd., 2024 SCC OnLine NCLAT 1242 (para 14)***. Reliance on ***K. Kishan v. Vijay Nirman Company Pvt. Ltd., (2018) 17 SCC 662*** is misplaced. The reliance on Vidarbha Industries is also incorrect, as clarified in *M. Suresh Kumar Reddy*, that Vidarbha is confined to its own facts, and Innoventive Industries continues to prevail.

5.8 Even after issuance of notice in the present proceedings, the CD proposed a fresh OTS on 25.10.2025, expressly admitting financial difficulty and acknowledging subsisting debt and default. This further reinforces the existence of financial debt and the CD's inability to repay.

5.9 In view of the above, the existence of financial debt, occurrence of default, and the maintainability of the petition stand clearly demonstrated. The CD's own acknowledgments, part-payments, and repeated settlement proposals further establish liability and inability to repay. Accordingly, the petition



deserves to be admitted under Section 7 of the Code and CIRP initiated against the CD in accordance with law.

5.10 The FC has relied on the following judgements –

- a. Millind Kashiram Jadhav Vs. State Bank of India through Hari Singh Dalodia & Ors. 2024 SCC Online NCLAT 534 (NCLAT, Delhi)
- b. Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr. (2021) 10 SCC 330 (Supreme Court of India)
- c. Innovative Industries Ltd. Vs. ICICI Bank & Anr. (2018) 1 SCC 407 (Supreme Court of India)
- d. E.S. Krishnamurthy & Ors. Vs. Bharath Hi-Tecch Builders (P) Ltd. (2022) 3 SCC 161
- e. Century Aluminium Co. Ltd. Vs. Religare Finvest Ltd., 2024 SCC OnLine NCLAT 1242 (NCLAT, Delhi)
- f. M. Suresh Kumar Reddy Vs. Canara Bank & Ors. (2023) 8 SCC 387 (Supreme Court of India)

6. ANALYSIS AND FINDINGS

6.1 We have perused the documents as placed before us and have heard the Ld. Counsels for the FC and CD.

6.2 The FC has filled this Application claiming a default amount of **Rs. 28,04,91,115/-**. The CD has not disputed this amount.

6.3 The **Date of default** mentioned in the Application is same as NPA date i.e. **07.02.2023**.

6.4 For establishing the existence of debt and default, the Applicant has attached copies of its facility agreements, sanction letters, registered simple



mortgaged deeds, Guarantee Deed, Statement of Accounts, foreclosure letter of the loan account issued by it, Demand Notices issued under Section 13(2) of SARFAESI Act, 2002, Reply of the CD to the said notice, copy of additional affidavit filed by the CD in Commercial Arbitration Petition and copies of emails along with attachments sent by the CD for settlement of debt of the Applicant. The CD has not denied the debt and has on multiple occasions agreed to the liability through its proposal for one-time settlement of the loan accounts in favour of FC. (Annexure P-17 at Page No. 450-454 of the Application). In the said proposal for one time settlement, the CD has clearly admitted its liability. Moreover, in the additional affidavit filed by the CD in commercial arbitration petition No. 21294 of 2024 (Annexure P-16, pages 440-449 of the Application), the CD has clearly admitted that an outstanding debt exists and is due and payable to the Applicant. Further, in its reply dated 20.05.2023 to the demand notice issued by the Applicant (Annexure P-15 pages 434-439 of the Application), CD has admitted the existence of debt and also that it had defaulted in repayment of the loan due to which, its loan account was classified as NPA on 07.02.2023. In our view, the documents placed on record by the Applicant including the acknowledgements made, conclusively demonstrate existence of debt and default exceeding the threshold of Rs. One Crore as per Section 4 of IBC, 2016.

6.5 The FC once proves the existence of debt and default exceeding the threshold, then the Adjudicating Authority is bound to admit the Insolvency Application. This Bench has placed reliance on the judgement passed by the Hon'ble Supreme Court in the case of ***Innovative Industries Limited***



v. ICICI Bank Limited, [(Civil Appeal Nos. 8337-8338 of 2017) (2017) 8SCR 33] which discussed extensively the scope of the powers of the Adjudicating Authority under Section 7 of the IBC and has held that the same is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred. The relevant portion of the said Judgment is reproduced below:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the



adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

- 6.6. **The pending Arbitration Petition No. 21294 of 2023 by the CD in respect of secured assets mortgaged with the FC.** That the Hon’ble NCLAT in **Century Aluminium Co. Ltd. v. Religare Finvest Limited, 2024 SCC Online NCLAT 1242**, has categorically held that pendency



of arbitration proceedings, whether prior to or subsequent to the filing of a Section 7 petition, is immaterial. The relevant extract is reproduced below:

“The fact that whether Arbitration Proceedings are pending on the date when Section Application is filed or it is sought to be initiated subsequent to filing of Section 7 Application is immaterial. The remedy under Section 7 is a special remedy, keeping the object and purpose of the IBC Code. When it is brought in the notice of the Adjudicating Authority that a Corporate Debtor needs a resolution it having committed default in payment of debt, the Court is obliged to consider the Section 7 Application to find out as to whether there is a debt and default. The Insolvency Resolution of a Corporate Debtor which needs Insolvency Resolution can await adjudication of Arbitration Proceedings nor the Application under Section 7 can be kept pending till the adjudication of Arbitration Proceeding is completed.”

- 6.7. The reliance placed by the CD on the judgment Hon'ble Supreme Court in K. Kishan matter (supra) is totally misconceived as the said judgement pertains to Section 9 of IBC where the existence of a pre-existing dispute bars the admission of the Application by the adjudicating authority.
- 6.8. Vidharbha Industries matter judgment (supra) also does not come to the rescue of the CD as Hon'ble Supreme Court in subsequent matter of M. Suresh Kumar Reddy vs. Canara Bank (2023) 8SCC 387 has clarified that Vidharbha judgment was rendered in its peculiar factual background and cannot be treated as a general principle. Hon'ble Supreme Court vide the said judgment has reaffirmed the position laid down in Innoventive Industries matter as referred to earlier. Moreover, the CD has failed to make



out a case for exercise of the discretion, if at all the same is available, by this Tribunal including financial viability and feasibility of the CD.

6.9. Several Case Laws have been cited by both the FC and CD. In view of no denial of debt and default by the CD we have discussed only the most relevant case laws in the matter.

6.10. According to the applicable law, the limitation period for filing an application under Section 7 is three years from the date of default. The present application was filed on 26.06.2025, which is well within the three-year limitation period calculated from the default date of 07.02.2023. Since the petition was filed within the prescribed limitation period, the claim is not barred by limitation.

6.11. In view of the facts as stated *supra* and also in view of the existence of 'financial debt' exceeding the threshold of Rs. One Crore, which is proved by the FC, the 'default' being committed on the part of the CD, which is also established by the Applicant, the application by the FC is not barred by the limitation, the Applicant has proposed the name of an IRP i.e. Mrs. Palak Swapnil Desai, against whom no disciplinary proceedings are pending as per the Form-2 attached by the applicant along with the Application and the Application filed by the Applicant is complete as all the required details and documents have been furnished along with the same, this Tribunal is left with no other option than to proceed with the present case and initiate the CIRP in relation to the CD. We are, therefore, of the considered view that the present Application filed by the FC is complete in terms of Section 7 of the IBC and deserves to be **admitted**.



ORDER

In view of the aforesaid findings, this Application bearing C.P. (IB) 729/MB/2025 filed under Section 7 of IBC, 2016, by Tata Capital Housing Finance Limited, the Applicant (FC) for initiating CIRP in respect of Dharan Infra-EPC Limited, 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 CD, 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 Mrs. **Palak Swapnil Desai**, having **Registration No. as IBBI/IPA-001/IPP01517/2019-2020/12515**, and **e-mail address palakdesai77@gmail.com** having valid Authorisation for Assignment up to 31.12.2025 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. IRP is directed to issue notice of admission to 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 IRP is directed to put up a notice of the project on flex board as per FORM A to be put on the project with respect to CIRP and in front on CD's office.
- XIV. 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.
- XV. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)

//TG//