2026 INSC 166

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).2211/2024

Power Trust
(Promoter of Hiranmaye Energy Ltd.) **....Appellant(s)**

Versus

Bhuvan Madan
(Interim Resolution Professional
of Hiranmaye Energy Ltd.) & Ors. **...Respondent(s)**

J U D G M E N T

Joymalya Bagchi, J.

1. Present appeal has been instituted by Power Trust,[1] a promoter of Hiranmaye Energy Ltd.[2] under Section 62, Insolvency and Bankruptcy Code, 2016[3], challenging order dated 25.01.2024 by National Company Law Appellate Tribunal, Principal Bench, New Delhi[4]. By the impugned order, NCLAT has upheld order dated 02.01.2024 by National Company Law Tribunal, Kolkata Bench[5],

[1] Hereinafter "Appellant".
[2] Hereinafter "Corporate Debtor".
[3] Hereinafter "IBC/The Code".
[4] Hereinafter "NCLAT".
[5] Hereinafter "NCLT/Adjudicating Authority".

whereby the NCLT admitted an application filed under Section 7, IBC[6] by REC Ltd.[7] and initiated the corporate insolvency resolution process[8] against the Corporate Debtor.

FACTS GIVING RISE TO THE APPEAL

2. A common loan agreement dated 19.06.2013 was entered into between the Corporate Debtor and 2nd Respondent to avail a term loan of Rs. 1859 crore for setting up of a thermal power plant at Haldia, West Bengal. Due to cost overruns, on 30.10.2015, the Corporate Debtor availed an additional term loan facility of Rs. 446.97 crore. Subsequently, the Corporate Debtor entered into a power purchase agreement[9] with the West Bengal State Electricity Distribution Company Ltd.[10]

3. On 30.06.2018, 2nd Respondent classified the accounts of Corporate Debtor as non-performing assets due to alleged default committed by the Corporate Debtor in making due payments.

4. Pursuant to negotiations, on 21.02.2020, 2nd Respondent approved a loan restructuring plan (restructuring without change in ownership) wherein the Corporate Debtor was to commence repayment from

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[6] Hereinafter "Section 7 application".
[7] Hereinafter "2nd Respondent/Financial Creditor".
[8] Hereinafter "CIRP".
[9] Hereinafter "PPA".
[10] Hereinafter "WBSEDCL".

31.12.2020 and interest payment on monthly basis was to commence from 30.06.2020. Further revisions led to a second restructuring proposal dated 29.09.2020 which envisaged repayment of loan in instalments from 31.03.2021 till 31.12.2042.

5. Implementation of the restructuring proposals was subject to certain pre-implementation conditions to be fulfilled by the Corporate Debtor. Such conditions *inter alia* included obtaining a favourable tariff order from West Bengal Electricity Regulatory Commission[11] by 28.02.2021, creating an initial Debt Service Revenue Account[12], demonstrating Corporate Debtor's power plant successfully running at installed capacity continuously for 72 hours, making available a priority debt of Rs. 83 crore and working capital of Rs.125 crore. However, the tariff order was not approved by WBERC by the stipulated date. Further, the Corporate Debtor also failed to comply with other vital pre-implementation conditions within the agreed deadline, i.e., 28.02.2021 as recorded in the consortium meeting dated 17.02.2021.

6. Consequently, financial creditor filed the Section 7 application before the NCLT recording the date of default as 31.03.2018 on an outstanding claim of Rs. 21,83,19,16,896 as on 05.06.2021. The

[11] Hereinafter "WBERC".
[12] Hereinafter "DSRA".

proceedings were assailed before the High Court at Calcutta and Single Judge vide order dated 02.07.2021 dismissed the writ petition *inter alia* holding that there was no arbitrary or unfair cancellation of the restructuring offer and that initiation of proceedings under the IBC before the Adjudicating Authority could not be faulted.

7. Matter was carried in appeal to the Division Bench. The Division Bench took note of the tariff order dated 31.05.2021 and partly modified the order passed by Single Judge.[13] The Bench directed the financial creditors of the Corporate Debtor to consider the afore-mentioned tariff order with regard to fulfilment of pre-implementation conditions of the restructuring proposal.

8. However, in the lenders' meeting on 11.11.2021 pursuant to such directions of the Division Bench, the request to revive the restructuring proposal was rejected as the Corporate Debtor had repeatedly failed to satisfy key pre-implementation conditions, including creation of a DSRA, maintenance of priority debt of Rs. 83 crore, and demonstration of Corporate Debtor's power plant successfully running at installed capacity continuously for 72 hours.

9. Thereafter, the Corporate Debtor took out IA No. 1020/2022 *inter alia* for a declaration that the restructuring proposals dated 29.09.2020

[13] MAT 626/2021, order dated 07.10.2021.

and 14.01.2021[14] were valid and binding *inter se* parties and dismissal of the Section 7 application. During the pendency of the said IA, Corporate Debtor claimed various sums had been accepted by 2nd Respondent in repayment of the debt which was to be liquidated by 2042 as per the 2nd restructuring proposal. The Corporate Debtor also filed IA No. 828/2023, *inter alia* praying that the date of default as per restructuring agreement dated 21.02.2020 squarely fell in the period covered under Section 10A, IBC. After hearing the parties, by order dated 02.01.2024, the Adjudicating Authority dismissed IA No. 1020/2022 and IA No. 828/2023, and admitted the Section 7 application initiating CIRP.

10. Being aggrieved by the admission order, Appellant preferred appeal before NCLAT which came to be dismissed vide the impugned order and has been challenged before this Court.

PROCEEDINGS PENDING THE APPEAL

11. During the proceedings before this Court, Appellant took out IA No. 84962/2024 seeking directions to the Committee of Creditors[15] to consider its settlement proposal and for stay of CIRP. On 03.05.2024, liberty was granted to Appellant to submit a settlement proposal for

[14] On 14.01.2021, the 2nd restructuring proposal was approved by Power Finance Corporation Ltd., which is another financial creditor of the Corporate Debtor.
[15] Hereinafter "CoC".

consideration in accordance with law. Thereafter, Appellant made three settlement proposals of Rs. 1,101.56 crore, Rs. 1,450 crore, and Rs. 1,601.29 crore, all of which were rejected by the CoC by overwhelming majorities. CoC rejected the settlement proposal citing the Corporate Debtor's repeated failure to implement earlier restructuring plans and expressing doubts about the Appellant's ability to pay, particularly in light of letter dated 13.08.2024 by SREI Equipment Finance Ltd.'s[16] alleging loan dues of Rs. 633 crore payable by the Appellant. The CoC also noted that the settlement proposals were being made by Appellant, the erstwhile promoter responsible for the Corporate Debtor's default in the first place.

12. On 29.10.2024, when the CoC rejected the Appellant's third settlement proposal, it simultaneously approved the resolution plan of Damodar Valley Corporation.[17] 1st Respondent[18] moved an application under Section 31, IBC before the Adjudicating Authority seeking final approval of DVC's resolution plan. Appellant filed objections challenging both the CoC's approval of DVC's plan and rejection of the Appellant's third settlement proposal, and these issues are still pending before the Adjudicating Authority.

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[16] Hereinafter "SEFL", which is the sole secured financial creditor of Power Trust, the Appellant.
[17] Hereinafter "DVC/successful Resolution Applicant"
[18] Hereinafter "Interim Resolution Professional".

13. Thereafter, the Appellant placed fourth (Rs.1,606.86 crore) and fifth (Rs.1,671.86 crore) settlement proposals before the CoC on 08.07.2025 and 20.07.2025 respectively, and both were rejected.

14. On 12.09.2025, this Court stayed the CIRP on the condition that the Appellant deposit Rs. 25 crore and furnish a bank guarantee of Rs. 100 crore, and the Appellant deposited Rs. 25 crore with the Registry of this Court. By order dated 23.09.2025, the stay was continued and the bank guarantee requirement was substituted by a further deposit of Rs.100 crore, which was also deposited, taking the total deposit to Rs.125 crore. During these proceedings, DVC was impleaded[19] and sought *vacatur* of the stay[20] citing serious prejudice and economic hardship due to stalling of the CIRP. Additionally, SEFL's application to intervene was allowed[21] whereby they sought release of the Rs.125 crore deposit towards the Appellant's alleged dues, contending that the Appellant must first clear liabilities to SEFL before seeking to fund settlement plans for the Corporate Debtor.

ARGUMENTS AT THE BAR

15. The Appellant argues that the CIRP is barred by Section 10A, IBC which prohibits initiation of CIRP for defaults occurring between 25.03.2020 and 24.03.2021. Although the Section 7 application

[19] IA No. 240917/2025.
[20] IA No. 240982/2025.
[21] IA No. 260460/2025.

attributes a default date of 31.03.2018 under the Common Loan Agreement dated 19.06.2013, Appellant submits that the first restructuring agreement dated 21.02.2020 reset the repayment schedule. As per the revised terms, interest payments were to commence on 30.06.2020 and the first instalment was due on 31.12.2020, thereby rendering the default date within the period envisaged in the Section 10A window.

16. It is also argued that the restructuring proposals dated 21.02.2020 and 29.09.2020 were final and binding between the parties and had novated the earlier common loan agreement dated 19.06.2013. 2nd Respondent had received a sum of Rs. 50 crore in December, 2021 without demur and had not controverted the Corporate Debtor's letter dated 24.12.2021 stating *"your receipt of the payment of the said sum of Rs. 50 Crore will be deemed and constructed by us to be an acceptance by you of the proposal contained herein".* This amounted to a deemed approval of the 2nd restructuring proposal dated 29.09.2020. No letter of termination of the restructuring proposal due to non-fulfilment of pre-implementation conditions was issued. The restructuring proposals envisaged repayment of loan in instalments till 2042 and there is no provision in these agreements that on failure of payment of any instalment the entire liability would stand revived. Notwithstanding these facts, both the Adjudicating Authority and NCLAT incorrectly held the restructuring proposals dated 21.02.2020

and 29.09.2020 were not final and binding and the debt had become due and payable.

17. It is further contended that the Corporate Debtor is a running and viable power project which cannot be treated as insolvent. The Corporate Debtor has a subsisting PPA for 25 years with WBSEDCL and has raised bills of about Rs. 906 crore between 01.11.2024 to 31.03.2025. It has a continuing fuel supply arrangement with Mahanadi Coalfields Ltd. under the SHAKTI Scheme, and had earned an EBIDTA of Rs. 20 crore per month during the CIRP. In this factual matrix, relying on *Vidarbha Industries Power Ltd.* v. *Axis Bank Ltd.,*[22] it is contended that the Section 7 application ought not to have been admitted.

18. Finally, it is argued that the settlement plan submitted by the Appellant is more viable and about Rs. 177 crore higher than that of the successful Resolution Applicant. Given this situation, CIRP may be kept in abeyance and CoC be directed to consider the settlement plan proposed by the Appellant.

19. To the contrary, the Respondents submit that the Appellant's reliance on Section 10A is misconceived. According to the Respondents, the restructuring proposals dated 21.02.2020 and 29.09.2020 never

[22] (2022) 8 SCC 352.

ripened into binding arrangements because the Corporate Debtor failed to satisfy the pre-implementation conditions. Once the restructuring failed at that threshold stage, the date of default cannot be shifted by referring to repayment schedules contemplated under those unimplemented proposals. Even otherwise as per the Appellant's case, the 1st restructuring proposal had been subsumed in the 2nd restructuring proposal, wherein the first instalment fell due on 31.03.2021 beyond the Section 10A window.

20. The Respondents further contend that the Appellant's case of novation is unsustainable for the same reason. As the pre-implementation conditions were not fulfilled, the proposals did not crystallise into enforceable agreements, and there was no novation of the original financing terms. The Respondents submit that subsequent part payments made towards an existing debt do not revive a failed restructuring nor do they satisfy the debt in full justifying the dismissal of the Section 7 application.

21. The Respondents also submit that the Appellant's emphasis on the Corporate Debtor's alleged viability is legally misplaced at the admission stage under Section 7, IBC. They contend that the Adjudicating Authority's role at that stage is limited to examining whether a financial debt exists and whether a default has occurred, and once those requirements are met, the Adjudicating Authority has

scarcely any discretion to refuse admission. Proceedings under Section 7 cannot be expanded into a broad inquiry on business viability, equities, or surrounding circumstances. Reliance is placed on *Innoventive Industries Ltd. v. ICICI Bank* [23] and *M. Suresh Kumar Reddy v. Canara Bank & Ors.*[24]

22. The Respondents submit that the Appellant's settlement proposal cannot interdict the CIRP unless such proposal secures approval of 90% of the CoC. In the present case, at the CoC meeting on 29.10.2024, the successful Resolution Applicant's plan was approved by 99.92% voting, while the Appellant's settlement proposals have been repeatedly rejected by overwhelming majority. It is well settled that the commercial wisdom of the CoC is non-justiciable. They assert that the settlement proposals pressed by the Appellant after 29.10.2024 are merely opportunistic attempts to disrupt CIRP, and therefore do not warrant any consideration.

ANALYSIS

23. Analysing the submissions of the parties, it appears the Appellant has assailed the admission of Section 7 application on the following issues:

[23] (2018) 1 SCC 407.
[24] (2023) 8 SCC 387.

i. Whether date of default fell between 25.03.2020 to 24.03.2021, and was thereby barred under Section 10A, IBC?

ii. Whether common loan agreement had been novated by 1st restructuring agreement dated 21.02.2020, which was followed by the 2nd restructuring agreement dated 29.09.2020, envisaging the repayment of debt in monthly instalments till 31.12.2042 and there was no existing debt due and payable by the Corporate Debtor at the time of admission of the Section 7 application?

iii. Whether the Adjudicating Authority ought not to have admitted the Section 7 application mechanically without assessing the viability of the Corporate Debtor as an ongoing concern and its ability to repay the debts, in view of *Vidarbha* (supra)?

24. Without prejudice to the aforesaid, it has also been contended that the settlement proposals given by the Appellant are more viable than that of the successful Resolution Applicant and accordingly, the CIRP ought to be kept in abeyance and such settlement proposal be favourably considered by the CoC.

A. Bar under Section 10A, IBC

25. Firstly, we take up the issue with regard to admission of the Section 7 application. In our considered view, the plea of bar under Section 10A, IBC is a non-starter. In the backdrop of outbreak of COVID-19

pandemic, as an ameliorative measure, Section 10A was incorporated in the IBC. The provision barred initiation of CIRP against a corporate debtor in the event the default arose on or after 25.03.2020, for a period of 6 months or such period not exceeding one year as may be notified. It may be noted that by notification the government extended the embargo till 24.03.2021.[25] Explanation to the Section, however, clarified that the bar will not apply to any default committed before 25.03.2020.

26. In the Section 7 application, 2nd Respondent's case is that the Corporate Debtor had defaulted under the common loan agreement dated 19.06.2013 on 31.03.2018, much prior to the commencement of the Section 10A bar. Controverting this stance, Appellant would argue that the common loan agreement had been subsequently restructured *vide* the 1st restructuring proposal dated 21.02.2020, whereby the first instalment became payable on 31.12.2020, attracting the prohibition under Section 10A. This argument is wholly misconceived. Even if the Appellant's case is assumed that the 1st restructuring plan had been accepted, the same was subsumed in the 2nd restructuring plan dated 29.09.2020 whereby the first instalment fell due on 31.03.2021, beyond the Section 10A period which operated from 25.03.2020 to 24.03.2021.

[25] Notification S.O. 4638(E) dated December 22, 2020, Ministry of Corporate Affairs.

27. That apart, we are in wholesome agreement with the NCLAT's finding that the restructuring proposals had not fructified into valid agreements novating the original contract. Both the restructuring proposals were underpinned on pre-implementation conditions *inter alia,*

a. obtaining a favourable tariff order from WBERC by 28.02.2021;

b. creating an initial DSRA;

c. demonstrating Corporate Debtor's power plant successfully running at installed capacity continuously for 72 hours;

d. making available a priority debt of Rs. 83 crore and working capital of Rs.125 crore.

These pre-conditions had not been complied with and even the subsequent tariff order dated 31.05.2021 did not provide adequate leverage to persuade the lenders to accept the restructuring proposals in their meeting convened on 11.11.2021 pursuant to High Court's direction vide order dated 07.10.2021. In such view of the matter, the date of default would relate to 31.03.2018 as per the Section 7 application, and the proceeding cannot be held to be barred in light of the Explanation to Section 10A, IBC.

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

[26] Section 5(7), IBC.
[27] Section 5(8), IBC.

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*,[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.

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[28] Section 5(20), IBC.
[29] Section 5(21), IBC.
[30] (2019) 4 SCC 17, Para 50-51.

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,[31] 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

[31] Rule 4, Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, read with Section 7(2), IBC prescribes the manner an application under Section 7, IBC, must be made. A financial creditor must make an application as in Form 1, which consists five parts. Part I, II and III requires the particulars of the applicant, the corporate debtor and the proposed resolution applicant respectively. Part IV requires the particulars of the financial debt. Part V requires documents, records and evidence of 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.*[32] held as follows:

> *"**34.** The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5)*

[32] (2022) 3 SCC 161.

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."*[33]

[33] *Swiss Ribbons* (supra), Para 28.

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."*[34]

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. <u>The view taken in Innoventive Industries still holds good.</u>"* (emphasis supplied)

[34] *Axis Bank Ltd. v. Vidarbha Industries Power Ltd.* (2023) 7 SCC 321.

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[35] 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.

C. Settlement Proposals

41. Finally, the Appellant in a last-ditch effort, has prayed that the settlement proposal offered by them is more viable than that of the

[35] Appellate Tribunal for Electricity.

successful Resolution Applicant, and on such score the CIRP may be stayed as per Section 12A. During the pendency of the appeal, the CIRP had continued and by order dated 03.05.2024, this Court gave liberty to the Appellant to submit settlement proposal to the CoC. Appellant made three settlement proposals, of Rs. 1,101.56 crore, Rs. 1,450 crore, and Rs. 1,601.29 crore, all of which were rejected by CoC. Such rejection had been prompted due to repeated failure on part of the Corporate Debtor to implement earlier restructuring plans and the viability of the Appellant's proposal in light of letter written by SEFL alleging a loan liability payable by the Appellant.

42. On 29.10.2024, while rejecting Appellant's 3rd settlement proposal, the CoC approved the resolution plan of DVC. Thereafter, Appellant's 4th and 5th settlement proposals worth Rs. 1,606.86 crore and Rs. 1,671.86 crore respectively were also rejected by the CoC. Appellant argues its 5th settlement plan is offering to pay Rs. 1,671.86 crore and is more viable than the accepted resolution plan submitted by DVC. It is trite law that the commercial wisdom of the CoC to accept one resolution plan over another cannot be second-guessed by the Court.[36]

[36] *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta and Others,* (2020) 8 SCC 531, Para 62-64; *Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC),* (2022) 2 SCC 401, Para 157-158.

43. Prior to the introduction of Section 12A and Regulation 30A,[37] there was no express provision in the IBC to withdraw the insolvency process once the CIRP was admitted. In such situations, this Court invoked Article 142 to do complete justice and arrive at just and equitable outcome by withdrawing CIRP.[38] Taking note of such lacuna, the legislature introduced Section 12A in the Code providing the statutory framework for withdrawal and settlement of claims post constitution of CoC when 90% of the voting share in the CoC approves such plan. Similarly, Regulation 30A was amended to provide for a detailed procedure for withdrawal/ settlement of claims after admission but prior to appointment of CoC. In light of such statutory architecture in place, this Court in *GLAS Trust Co. LLC v. BYJU Raveendran*,[39] held reference to inherent powers under Rule 11, NCLT/NCLAT Rules,[40] or under Article 142 to direct post-admission withdrawal/settlement of claims no longer arises. However, we hasten to add that our observation may not be construed as a complete bar on the plenary powers under Article 142 to pass directions during CIRP in appropriate cases to do complete justice.

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[37] IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
[38] *Uttara Foods & Feeds (P) Ltd. v. Mona Pharmachem*, (2018) 15 SCC 587; *Lokhandwala Kataria Construction (P) Ltd. v. Nisus Finance and Investment Managers LLP*, (2018) 15 SCC 589.
[39] (2025) 3 SCC 625, Para 64.
[40] National Company Law Tribunal Rules, 2016, and National Company Law Appellate Tribunal Rules, 2016.

44. Notwithstanding the above stated statutory scheme and merely as a concessionary measure, this Court stalled the CIRP vide order dated 12.09.2025 subject to the Appellant depositing Rs. 25 crore and furnishing a bank guarantee of Rs. 100 crore. At this stage, DVC intervened and vehemently opposed delay in final approval of its resolution plan. Having considered these concerns of the successful Resolution Applicant, we are in agreement with the Respondents that any further direction to stall the CIRP on the plea of further settlement proposals at the behest of the Appellant would be prejudicial to the interest of a swift and timely resolution of insolvency process.

CONCLUSION

45. In light of the aforesaid discussion, the appeal is dismissed and the stay on CIRP vide order dated 12.09.2025 is vacated.

IA NO. 260460/2025

46. SEFL, a secured creditor of the Appellant, has prayed for release of deposits amounting to Rs.125 crore made by the Appellant as a condition of the stay granted by this Court. SEFL contends that an order restraining the alienation of shares of Corporate Debtor held by Appellant was passed by the High Court at Calcutta in an application

under Section 9, Arbitration & Conciliation Act, 1996.[41] We are unwilling to accede to such plea as no award, final or interim, crystallising SEFL's claim against the Appellant has been placed on record and the aforesaid deposit was made as a condition to stay the CIRP of the Corporate Debtor and not to secure any claim against the Appellant. Given these circumstances, SEFL's application stands rejected. Registry is directed to refund the amount of Rs.125 crore kept as fixed deposit along with interest accrued thereon to the Appellant.

47. Pending application(s), if any, also shall stand disposed of.

……, CJI
(SURYA KANT)

……, J
(JOYMALYA BAGCHI)

……, J
(VIPUL M. PANCHOLI)

NEW DELHI,
FEBRUARY 18, 2026.

[41] Arbitration Petition (Commercial) No. 857/2024, order dated 16.12.2024.