

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
[Through Physical hearing/ VC Mode (Hybrid)]

Supplementary List -1

ITEM No.01
C.P (IB) No.185/BB/2024

IN THE MATTER OF:

Piramal Capital & Housing Finance Ltd., ... Petitioner
Vs.
Atria Brindavan Power Pvt. Ltd., ... Respondents

Petition under Section 7 of the I & B Code, 2016

Order delivered on: 10.12.2025

CORAM:

SHRI. SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI. RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : Ms. Diksha Garg
For Respondent : Mr. Vishnu Sharma

ORDER

1. Heard Learned Counsels for the parties.
2. **The Petition is dismissed vide separate order.** File be consigned to records.

-Sd-

RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-

SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

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IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
*(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)*

CP (IB) No.185/BB/2024
*(Application u/s. 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:

Piramal Capital and Housing Finance Limited

Registered Office at: 601, 6th Floor, Amity Building,
Agastya Corporate Park, Kamani Junction
Opposite Fire Station, LBS Marg,
Kurla (West), Mumbai,
Maharashtra — 400070

... Financial Creditor No.1/Petitioner No.1

AND

Omkara Assets Reconstruction Private Limited

registered office at: No.9, M.P. Nagar
First Street, Kongu Nagar Extension,
Coimbatore, Tirupur,
Tamil Nadu — 641607

... Financial Creditor No.2/Petitioner No.2

VERSUS

Atria Brindavan Power Private Limited

registered address at: No.11,
1st Floor, Commissariat Road,
Bangalore— 560025.

... Respondent/Corporate Debtor

Order delivered on: 10/12/2025

Coram:

Shri. Sunil Kumar Aggarwal, Hon'ble Member (Judicial)

Shri. Radhakrishna Sreepada, Hon'ble Member (Technical)

ORDER

1. The present Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016 on 20.12.2022 by **Piramal Capital and Housing Finance Limited** and **Omkara Assets Reconstruction Private Limited** seeking to initiate Corporate Insolvency Resolution Process in respect of

Atria Brindavan Power Private Limited for committing default in payment of **Rs. 428,39,20,221/-** (Rupees Four Hundred Twenty Eight Crore Thirty-Nine Lakh Twenty Thousand Two Hundred and Twenty-One Rupees Only) as on 23.05.2024 with further interest accruing thereon and the date of default being 19.12.2023, as per Part IV of Form No. 1 of the Petition. The petition accompanies the Record of Default information in Form-D. *Parties to the petition shall hereafter be referred to as reflected in the title of the case.*

2. The relevant facts of the case as culled out of pleadings are as follows:

- i. The Petitioner/Financial Creditor is a Non-Banking Financial Company earlier known as Piramal Finance Private Limited incorporated on 11.04.1984 under the provisions of the Companies Act, 1956, having its Corporate Identification Number as U65910MH1984PLC032639 The Respondent/Corporate Debtor is a private limited company registered under the provisions of the Companies Act, 1956, having its company identification number as U40101KA2000PTC 028288 and is engaged in the business of generating power from renewable sources like hydro, wind, and solar.
- ii. The Petitioner No.2/Financial Creditor No.2 was incorporated on 19.03.2014. On 13.02.2024 a Deed of Assignment was entered between Piramal Capital and Housing Finance Limited and Omkara Assets Reconstruction Private Limited by which Financial Creditor No.1 assigned its entire exposure under the Debenture Trust Deed to Financial Creditor No.2 along with all rights, title and interest in the underlying security on "*as is where is*" basis. However, on 22.02.2024 the Corporate Debtor and its Promoters/Promoter entities filed a suit, bearing No. **COM. O.S./298/2024** against Piramal Capital, Baboon Investments Holding B. V. (being another debenture holder), Omkara and Axis Trustee Services Ltd. before the Commercial Court, Bengaluru which vide order dated 25.04.2024 injunctioned and restrained Financial Creditors as well as Baboon investments B.V. from acting exercising rights under the Deed of Assignment and Debenture Trust Deed and aggrieved by the same the both the Financial Creditors approached the Hon'ble High Court of Karnataka wherein vide order dated 09.05.2024 it was clarified that subject to further orders of the High Court, the Commercial Court order dated 25.04.2024 would not come in

the way of the Financial Creditors to initiate joint action against the Corporate Debtor for any violation/default under the terms of the Debenture Trust Deed.

- iii. On 01.12.2016, the Board of Directors of the Corporate Debtor in their Extra Ordinary General Meeting authorised the Corporate Debtor to issue, on a private placement basis 90,000 Redeemable Secured Non-Convertible Unlisted Debentures ("Debentures") of the face value of Rs.1,00,000 each, aggregating to Rs. 900,00,00,000 and on 5.12.2016 a Debenture Trust Deed ("DTD ") was executed between the Corporate Debtor, its promoters and Axis Trustee Services Limited who was appointed as the Debenture Trustee and as per Clause 5 read with Schedule IV of the DTD the issuance of the Debentures was divided into six tranches aggregating to a principal amount of Rs.750,00,00,000 and one optional tranche aggregating to an amount of Rs. 150 00,00,000 in the following manner:-

Tranche 1	<i>Subscription amount of up to Rs.305,00,00 000/</i>
Tranche 2	<i>Subscription amount of a minimum of Rs 40,00,00,000, up to Rs. 70,00,00,000</i>
Tranche 3:	<i>Subscription amount of up to Rs. 200,00,00,000</i>
Tranche 4:	<i>Subscription amount of up to Rs. 50,00,00,000</i>
Tranche 5:	<i>Subscription amount of up to Rs.100,00,00,000 based on additional equity invested by the Promoters of the Borrower in the new projects or pipeline project based on the approval of and satisfaction of Debenture Holders;</i>
Tranche 6:	<i>Subscription amount of up to Rs. 25,00 00,000 and as per Clause 5.3 of the DTD, the subscription of an optional tranche of up to Rs. 150,00,00,000</i>

The Financial Creditors also submit that in accordance with Clause 5.3 of the DTD, the subscription of an optional tranche of up to the sum of Rs. 150,00,00,000 (Rupees One Hundred and Fifty Crores) was available. As per Clause 25 read with Schedule XI of the DTD, the Corporate Debtor was required to make payment of the coupon/interest due to the Debenture Holders on stipulated dates, which are as follows: -

Coupon Payment date	Annual Coupon in percentage
0.09.2017	6%
30.09.2018	6%
30.09.2019	6%
30.09.2020	8%
30.09.2021	8%
30.09.2022	9%
30.09.2023	9%

- iv. Pursuant to issuance of the Private Placement Offer Letter on 20.12.2016 for the subscription of the Debentures by the Corporate Debtor, Financial Creditor

No.1 subscribed to a total of 24,250 Debentures in three tranches. On 20.12.2016, the Corporate Debtor had issued a compliance certificate cum subscription notice for the subscription of Tranche I and vide Allotment dated 20.12.2016, Financial Creditor No.1 was allotted 15,250 Debentures amounting to Rs. 152,50,00,000. Subsequently on 7.07.2017, the Corporate Debtor issued a compliance certificate cum subscription notice for the subscription of Tranche 2 and vide Allotment dated 07.07.2017, Financial Creditor No.1 was allotted 3500 Debentures amounting to Rs.35,00,00,000 and Part of the Tranche 3 was subscribed by Financial Creditor No.1 vide allotment letter dated 18.12. 2017 and was allotted a total of 5500 Debentures amounting to Rs 55,00,00,000/

- v. The Financial Creditors submit that principal/redemption amount under the Debentures was required to be paid/redeemed by the Corporate Debtor as per the dates specified in Schedule XI of the DTD, which were as follows:
 - i. 20% of the Debentures on the Sixth anniversary of the closing date i.e., 19.12.2022.
 - ii. 80% of the Debentures on the Seventh anniversary of the closing date i.e., 19.12.2023.

The Corporate Debtor defaulted first time on the payment of interest which was due on 30.09 2021 and subsequently also failed to make a coupon payment which was due on 30.09.2023. However, both these defaults were cured by the Corporate Debtor in the months of November 2021 and October 2023 respectively.

- vi. In terms of the payment schedule set out in Schedule XI of the DTD as stated above the obligation of the Corporate Debtor to make payment of the balance redemption amount in respect of the subscribed Debentures fell due on 19.12.2023 (i.e. 7th anniversary from "Closing Date" under the DTD). The Corporate Debtor defaulted in honouring this payment obligation that fell due on 19.12.2023.
- vii. The Financial Creditors submit that, Clause 34.1.3 of DTD states that where "any payment of the coupon and/or outstanding principal or redemption premium has not been funded by the promoters and/or subsidiaries in accordance with the debenture document", it would constitute an event of default. Further, with respect to a payment default, there is no cure period

- provided under the DTD. Further, in terms of the payment schedule set out in Schedule X1 Corporate Debtor defaulted in honouring this payment obligation that fell due on 19.12.2023 and the Corporate Debtor continues to subsist the default as of the date of this application.
- viii. On 13.02.2024, Financial Creditor No.1 entered into a deed of assignment with Financial Creditor No.2 in terms of which Financial Creditor No.1 assigned the Debentures exposure along with all right, title and interest (including in respect of the underlying security interest) on an "*as is where is*" basis to Financial Creditor No.2 and a copy of Deed of Assignment is annexed and marked as Annexure-R. Pursuant to the Deed of Assignment, Financial Creditor No.1 issued a Notice of Intimation of Assignment dated 14.02.2024 to the Corporate Debtor and Financial Creditor No.2 issued a Notice of Intimation of Assignment dated 16.02.2024 to the Corporate Debtor, informing the Corporate Debtor of the principal-to-principal assignment of the debentures. A copy of the letters dated 14.02.2024 and 16.02. 2024 is **Annexure-S und T** to the petition.
- ix. Thereafter, on 22.02 2024, the Corporate Debtor and its promoter entities filed **COM. O.S. 298/2024** ("Suit") against Financial Creditor No.1, Baboon Investments Holding B.V. (being another debenture holder under the DTD), Financial Creditor No.2 and Axis Trustee Services Ltd. before the Additional City Civil and Sessions Judge, Commercial Court, Bengaluru, inter alia seeking a declaration that the Deed of Assignment is bad in Law and a permanent injunction to restrain the Financial Creditors from exercising their rights under the Deed of Assignment and the DTD. On 28.02.2024, the Commercial Court heard the matter ex parte and refused to grant injunctive relief as sought by the Corporate Debtor and its promoters/promoter entities and directed to issue an emergent notice to Financial Creditor No.1, Baboon Investments Holding B.V. (being another debenture holder under the DTD), Financial Creditor No.2 and Axis Trustee Services Ltd.
- x. Subsequently on 02.03.2024 the Corporate Debtor and its promoter entities filed a Writ Petition - **WP 6931/2024** before the Hon'ble Karnataka High Court seeking quashing/setting aside the order dated 28.02.2024 passed by the Commercial Civil Court and for providing protective interim relief. Thereafter vide. ex-parte order dated 5.03.2024, the Hon'ble High Court issued notice to

- Financial Creditor No.1, Baboon Investments Holding B.V., Financial Creditor No.2 and Axis Trustee Services Ltd. and directed both the Financial Creditors not to exercise any rights under the DTD dated 05.12.2016 and Deed of Assignment till the next date of hearing.
- xi. On 28.03.2024 Financial Creditors filed applications before the Hon' ble Karnataka High Court seeking vacation of the ex parte order and vide order dated 01.04.2024, Hon'ble High Court disposed WP 6931/2024 by stating that the questions of jurisdiction may be dealt with by the Commercial Court. In compliance of order dated 01.04.2024 of Hon'ble High Court, the Financial Creditor No.1, Baboon Investments Holding B.V., Financial Creditor No.2 and Axis Trustee Services Ltd filed their objections before the Commercial Court thereafter, on 09.04.2024 Corporate Debtor filed their reply to the objections.
 - xii. Subsequently, after hearing the matter the Commercial Court passed orders dated on 25.04 2024, in IA Nos. II and III filed by the Corporate Debtor inter alia injuncting and restraining Financial Creditors as well as Baboon Investments B.V. from acting, exercising rights under the Deed of Assignment and DTD. Thereafter, on 07.05 2024, Financial Creditor No.1 filed **COMAP 165/2024** and on 08.05.2024 Financial Creditor No.2 filed **COMAP 167/2024** before the Hon'ble High Court of Karnataka, Bengaluru challenging the order dated 25.04.2024 passed by the Commercial Court. Vide order dated 9.05.2024, Hon'ble Karnataka High Court clarified that subject to further orders of the Court, the order dated 25.04.2024 passed by the Commercial Court would not come in the way of Financial Creditors to initiate joint action against the Corporate Debtor for any violation/default under the terms of DTD.
 - xiii. Accordingly this Section 7 IBC application has been filed jointly by the two Financial Creditors for initiating corporate insolvency resolution process ("CIRP") against the Corporate Debtor. It is further submitted that Corporate Debtor has defaulted in its payment obligations to the Financial Creditors. All necessary pre-requisites of Section 7 are fulfilled being the existence of financial debt and an admitted default in repayment by the Borrower of over INR 1 Crore. The Financial Creditors, therefore, state and submit that this is a fit case for admission and commencement of corporate insolvency resolution process against the Corporate Debtor.

3. The Respondent has filed objections on 13.12.2024 stating as under:
- i. **No Admitted Debt** - Petitioner No. 1 does not possess any debt that is admitted, crystallised, or legally recoverable from the Corporate Debtor. The alleged debt is wholly disputed and remains neither ascertained nor established in accordance with law. In the absence of a clearly determined, quantified, and payable debt, the invocation of jurisdiction u/s 7 of the Code, is untenable. It is a settled principle that a debt must be unequivocally proven and due for payment before any proceedings u/s 7 can be sustained. Furthermore, in accordance with Section 52 of the Indian Contract Act, 1872, wherein reciprocal promises are to be performed in the order expressly fixed by contract, the Respondent submits that the Petitioner No. 1's prior breach in failing to infuse the contractually mandated subscription amounts has discharged the Respondent of its reciprocal obligations under the DTD dated 05.12.2016. Consequently, the entire foundation of the financial creditor's claim is devoid of merit.
 - ii. **Omkara is not a Financial Creditor and is an unauthorised alleged assignee** - M/s. Omkara Assets Reconstruction Pvt. Ltd. lacks standing as a financial creditor No. 2 of the Corporate Debtor and is an unauthorized alleged assignee under the Assignment Deed executed by the Petitioner No. 1. The alleged assignment is in flagrant contravention of the express terms of the DTD, specifically violating the mandatory 'Right of First Offer' provision stipulated in Clause 38 thereof, which prohibits assignment post the Debenture Final Settlement Date and mandates that any assignment be subject to the Company's contractual right of first refusal. No privity of contract exists between Financial Creditor No. 2 and the Respondent, rendering the Financial Creditor No. 2 bereft of authority to maintain any action whatsoever, let alone proceedings under the Code. The validity and legitimacy of this alleged assignment remains sub-judice before the District Commercial Court, Bangalore, thereby rendering the present proceedings premature and procedurally defective pending judicial determination of the assignment's validity.
 - iii. **Suit filed by Financial Creditors and Pendency of Parallel Civil proceedings** - The Financial Creditors have also filed Commercial Suit (L) No. 26823 of 2024 before the Hon'ble Bombay High Court seeking a determination

of the alleged sum of Rs. 464,67,41,242/- with interest. That suit will proceed as a full civil trial requiring evidence and witness examination. The Respondent has already placed its detailed reply on record in those proceedings. In view of the issues already pending adjudication before the civil court, the maintainability of the present application is affected, having regard to the principles governing parallel proceedings. The Financial Creditors are, at the same time, pursuing proceedings under the Code as well as civil proceedings before the Bombay High Court on the same subject matter. Further, Commercial Suit (OS) No. 298 of 2024 filed by the Corporate Debtor before the Commercial Court, Bengaluru, also covers related questions regarding contractual performance and obligations. With these matters already before the civil courts, the present application raises concerns of parallel adjudication and its maintainability requires consideration on that basis.

- iv. **Suit filed by the Corporate Debtor** - The Corporate Debtor and its Promoters have filed Commercial Suit before the Hon'ble Commercial Court at Bangalore on 24.02.2024, raising serious triable issues concerning repudiatory breaches committed by Petitioner No.1 under the DTD, including the failure to infuse the entire subscription amount (only 2.5 tranches subscribed against 6 tranches plus one optional tranche aggregating Rs.750 crores and Rs.150 crores respectively) and the alleged assignment in violation of mandatory contractual provisions. The issues raised in the Bangalore Suit involve identical facts and circumstances that form the foundation of the present Application. With these matters already pending adjudication before the civil court, the determination of debt and default is yet to be concluded. In such circumstances, initiation of summary proceedings under the Code, while comprehensive civil suits are underway, warrants reconsideration.
- v. **Abuse of the Process of using this Adjudicating Authority** - The present Application was filed on 23.09.2024, subsequent to the proceedings initiated by the Financial Creditors before the Hon'ble Bombay High Court. The sequence of events suggests that the Financial Creditors are simultaneously pursuing remedies before civil courts and under the Code. It is well-settled that proceedings under the Code cannot function as a substitute for individual debt recovery mechanisms, as the objective of the Code is collective insolvency

resolution rather than creditor-specific enforcement. Further, various Judicial precedents of the Hon'ble Supreme Court and the Appellate Tribunal have consistently emphasized that the Code is intended to address insolvency and revive the corporate entity, and not to serve as a forum for individual recovery. In view of the nature and timing of the present Application, and the remedies already invoked before civil courts, the maintainability of the Application requires consideration against the settled distinction between recovery proceedings and insolvency resolution.

- vi. **Discussions between the Corporate Debtor/Respondent and Piramal/ Petitioner No. 1 on Amicable Settlement of Issues** - Even as recently as 04.09.2024, the Respondent and Petitioner No.1 were engaged in bona fide amicable discussions and negotiations with a view to arriving at a mutually acceptable resolution of the inter se differences pertaining to the same issues arising out of the DTD that form the subject matter of the instant Application. The Respondent demonstrated earnest settlement efforts and genuine commitment to resolving disputes through mutual discussion. The filing of both the present Application under Section 7 of the Code and the aforementioned commercial suit in the Bombay High Court occurred during these ongoing negotiations. The Respondent submits that the present Application has been filed at a time when the parties were engaged in ongoing settlement discussions, and that proceeding with admission at this stage may adversely affect those negotiations. It is therefore contended that admitting the Application during active dialogue between the parties may not align with principles of fairness and may undermine the settlement process.
- vii. **Corporate Debtor is a Going Concern and is not insolvent** - The Respondent submits that they form part of the Atria group, which has been in operation for over five decades and is active across sectors such as renewable energy, hospitality, real estate, education, and power generation. Established in 2000, the Respondent has developed an operational renewable energy capacity of approximately 480 MW at the group level, with a portfolio comprising wind, solar, and hydro projects. The Respondent also operates renewable energy platforms across several states, including Karnataka, Tamil Nadu, Andhra Pradesh, Madhya Pradesh, and Gujarat, and has planned capacity additions in

the near term. The PWC report dated January 2024, placed on record by Petitioner No. 1 in the Bombay proceedings, reflects a consolidated fair market value of approximately Rs.1,339 crores for the Corporate Debtor and its subsidiaries. The Respondent submits that it maintains a positive net worth, continues to operate multiple ongoing projects, and remains a commercially viable entity.

- viii. **Corporate Debtor has not committed any default and the Purported debt is not due and Payable** - The Respondent submits that no debt has been conclusively established as due and payable to Piramal, as the entire claim remains disputed. In 2016, the Corporate Debtor sought financing for expansion of its renewable energy projects. Petitioner No. 1 proposed funding through non-convertible debentures under the DTD, which contemplated subscription in six tranches aggregating Rs. 750 crores, with an additional optional tranche of Rs. 150 crores. It is further stated that the Debenture Holders subscribed only to 2.5 tranches, and that the subsequent tranches were not subscribed despite the Corporate Debtor having fulfilled the conditions precedent. The Corporate Debtor has continued to meet its obligations under the DTD, including coupon payments, principal repayments, redemption premiums, and interest payments, amounting in aggregate to Rs.393,47,44,809. The Respondent therefore submits that, having regard to Section 52 of the Indian Contract Act, 1872, its reciprocal obligations stand affected by the non-subscription of the remaining tranches.
- ix. **Failure to subscribe to the Debentures as mandated under the DTD** - The Debenture Holders subscribed only up to the second and one-half tranches under Clause 5 of the DTD and no further subscriptions were made thereafter. The Corporate Debtor had fulfilled the conditions precedent for the subsequent tranches and continued to operate its projects efficiently; however, the remaining tranches were not infused, reportedly on account of concerns relating to fund availability and sector viability. The Respondent submits that the non-subscription affected its ability to implement the expansion plans envisaged under the DTD and had a consequential impact on project execution and cash flows. It is further contended that, in view of the non-performance of

the remaining tranche obligations, the Corporate Debtor's reciprocal obligations stood correspondingly affected.

- x. **Arbitrarily seeking change in IRR is contrary to the terms of the DTD -** The Debenture Trust Deed was executed as a fixed-rate arrangement, with no provision for any increase in the Internal Rate of Return or interest payout. The Corporate Debtor states that, notwithstanding this, Piramal sought an increase in the rate from 16% IRR to 18% IRR, as reflected in email communications dated 01.10.2019, 11.12.2019, and 23.12.2019. The Corporate Debtor responded on 23.01.2020, noting that any revision of the interest rate would not be consistent with the terms of the DTD. It is submitted that these exchanges contributed to subsequent disagreements between the parties regarding their respective contractual positions.
- xi. **Arbitrarily seeking pre-mature payout of Rs. 80 crores -** The Corporate Debtor submits that, following its communication declining any revision to the fixed interest rate under the Debenture Trust Deed, Piramal raised a demand for payment of Rs. 80,00,00,000 vide email dated 22.01.2020, referring to certain asserted events of default. It is the Corporate Debtor's position that the amount demanded was not due under the terms of the Debenture Trust Deed. The Corporate Debtor responded on 03.02.2020, stating that it had complied with its servicing obligations and that no such amount was payable in terms of the Debenture Trust Deed. It is submitted that the parties thereafter continued to differ on their respective interpretations of the contractual provisions and the basis of the demand raised.
- xii. **Arbitrarily looking to exit renewable energy portfolio in contravention of the DTD -** The Debenture Holders subscribed only to 2.5 tranches under the DTD and did not proceed with the remaining tranches. It is stated that, during the same period, Piramal was exploring options relating to its renewable energy portfolio, as reported in a news article in the Economic Times dated 20.05.2020. The Respondent submits that these circumstances indicate that the remaining tranches were not infused, and no alternative exit mechanism was proposed in terms of the DTD. It is further submitted that, while the debentures continued to be held, the non-subscription of the subsequent tranches limited the Corporate Debtor's ability to pursue the expansion and project

implementation contemplated under the DTD. The Respondent contends that, in view of these circumstances, the basis of the alleged breaches attributed to it requires examination in light of the contractual framework and the events that transpired.

xiii. **Failure to follow mandatory contractual procedures in the assignment -**

The alleged assignment of the debentures to Petitioner No. 2 did not follow the procedural requirements set out in Clause 38 of the Debenture Trust Deed. It is stated that the DTD contemplates restrictions on assignment after the Debenture Final Settlement Date and provides a Right of First Offer in favour of the Corporate Debtor. According to the Respondent, no prior notice of the proposed assignment was issued and no opportunity was given to exercise the Right of First Offer. It is further submitted that no Event of Default was formally notified under the Debenture Trust Deed prior to the alleged assignment. The Respondent asserts that the contractual steps prescribed as prerequisites to any assignment were not complied with, and therefore the basis of Petitioner No. 2's status as a financial creditor requires examination in light of the terms of the Debenture Trust Deed.

xiv. **Interim Relief and Restraint Orders from Higher Courts –**

The Respondent submits that the validity of the alleged assignment is presently under challenge before the Commercial Court at Bengaluru. By an order dated 25.04.2024, the Commercial Court granted interim relief restraining the Financial Creditors from exercising rights under the Debenture Trust Deed and the securities created thereunder. The Hon'ble High Court of Karnataka, by orders dated 05.03.2024 and 01.04.2024, also directed that no rights under the Debenture Trust Deed or the Deed of Assignment be exercised pending adjudication. It is stated that these interim orders reflect a prima facie consideration of the issues in favour of the Corporate Debtor. The ad-interim order of the Vacation Bench dated 09.05.2024, granting liberty to initiate joint action under the Debenture Trust Deed, was passed without adjudication on merits, and the related appeals are still pending. The Respondent submits that the present Application is expressly subject to the outcome of those proceedings before the Hon'ble High Court of Karnataka, and therefore requires to be viewed in the context of the pending determinations by the superior court.

- xv. **Notification of Default despite subsisting Interim restraint orders** - Despite subsisting interim orders restraining any action under the Debenture Trust Deed, Piramal proceeded to report an alleged default of the Corporate Debtor to NeSL on 07.05.2024. The Corporate Debtor, in its response dated 16.05.2024, expressly denied the alleged default and pointed out that the claim is disputed on material aspects, including the existence, quantum, and alleged due-and-payable nature of the debt. The Corporate Debtor has also instituted contempt proceedings before the Commercial Court, Bengaluru, alleging violation of the interim orders, which remain pending. This conduct casts doubt on the bona fides of the purported Financial Creditors in maintaining the present Application.
- xvi. **Piramal has been acting in Bad Faith since inception** - The conduct of Piramal, viewed in its entirety, reflects a consistent pattern of non-performance of its obligations under the DTD. Although the DTD contemplated subscription to six mandatory tranches aggregating Rs.750 crores, along with one optional tranche of Rs. 150 crores, Petitioner No. 1 subscribed only to 2.5 tranches. Following this, Petitioner No. 1 issued several communications—dated 23.02.2021, 26.04.2021 (back-dated), 17.05.2021, 28.06.2021, 08.04.2022, 24.08.2022 and 08.11.2022, alleging breaches by the Respondent. These allegations were repeatedly denied by the Respondent, which maintained that the demands, including calls for increased interest contrary to the fixed-rate structure of the DTD and requests for premature payment of Rs. 80 crores, were unfounded. The said communications also contained threats of levy of default interest, despite the Respondent's assertion of compliance with all contractual requirements. The overall sequence of events, including Petitioner's contemporaneous steps indicating an intention to exit the renewable energy sector, suggests that the purported breaches were asserted in the context of an anticipated disengagement from its investment obligations.
- xvii. **Comprehensive security available to Creditors** - The Financial Creditors are already secured through an extensive security package created under the Debenture Trust Deed and the accompanying security agreements. The securities include a first-priority and exclusive charge over the Designated Account and all receivables therein; a pledge of 100% of the issued and fully

paid-up share capital of the Corporate Debtor on a fully diluted basis; a pledge over all compulsorily convertible debentures and other security instruments of the Respondent, a pledge of 100% of the equity shares in various subsidiary entities, including *Atria Solar Private Limited*, *Atria Hydel KRS Private Limited*, and the subsidiaries of *Atria Solar Power* and *Atria Wind Power*; and a first-priority charge over all hypothecated assets as set out in Schedule XVIII of the DTD. The Respondent submits that its asset base and security coverage significantly exceed the purported debt of Rs. 428 crores. This position is supported by the fair-market valuation of Rs. 1,339 crores recorded in the PWC report placed on record by Petitioner No. 1 in the Bombay Suit. In view of the substantial and comprehensive security already available, the initiation of corporate insolvency resolution proceedings would serve no meaningful purpose, as the purported Financial Creditors stand fully secured.

- xviii. **Public Interest and Government Contracts** - The Corporate Debtor submits that it supplies electricity to corporates, multinational enterprises, state electricity distribution companies, universities, and government establishments across multiple States. A significant portion of its off-takers comprises governmental and public sector entities, thereby placing public interest at the forefront. It is contended that admission of the present Application may place these critical government supply arrangements in jeopardy, impair the Corporate Debtor's ability to meet rising electricity demand, and potentially disrupt public service delivery and electrification programmes across several States. It is further submitted that commencement of the corporate insolvency resolution process would constitute a material adverse event under several of these contracts, with a likelihood of triggering cross-defaults and additional liabilities, thereby aggravating rather than mitigating any perceived financial stress. In light of the potential adverse implications on public interest and ongoing governmental objectives, it is urged that this Adjudicating Authority's discretionary jurisdiction ought to be exercised against admission of the Application.
- xix. **Employment and Stakeholder considerations** - It is submitted that commencement of the CIRP would place the Respondent's ongoing operations and projects in jeopardy, directly affecting more than 200 employees presently

engaged with the Company, as well as a substantial number of contractors and vendors whose business activities are dependent upon the Respondent's operational stability. It is further submitted that any disruption to government contracts and project execution may result in cascading effects on public service delivery across multiple States. In exercising its discretionary jurisdiction, particularly having regard to the considerations under Section 75 of the Code, this Adjudicating Authority's may take into account the wider stakeholder impact, employment consequences, and public interest implications arising from the admission of an application against an entity that continues to operate as a going concern with positive operational indicators and expansion potential.

- xx. **Effect of Admission of other creditors** - The Respondent submits that the admission of the present Application would trigger material adverse event clauses contained in numerous contracts executed by the Corporate Debtor with third parties, thereby substantially increasing the Company's overall debt obligations and rendering the financial position demonstrably worse rather than improved. The interests of the Corporate Debtor's other creditors, which remain in regular standing and are being serviced without default or delay, would be severely and irreparably prejudiced by the admission of the present Application and commencement of CIRP. The initiation of CIRP would not serve to ameliorate the overall financial condition but would instead create cascading defaults and cross-defaults that would exacerbate the Company's financial position.
- xxi. **Incomplete submission of Documents and Suppression of facts** - It is submitted that the present Application has been filed with incomplete and deficient documentation. In particular, Annexure R (pages 373 to 480), which constitutes a material component of the basis on which the Financial Creditors assert their right to maintain the Application, has been filed in a substantially redacted form. The Respondent submits that such redaction has deprived it of complete information necessary to respond to the allegations fully and effectively in the Application. The Respondent further states that, by correspondence dated 02.12.2024, it sought an unredacted copy of the said document, which request was declined by the purported Financial Creditors

vide response dated 05.12.2024. It is contended that the filing of incomplete material and the non-disclosure of relevant contents of Annexure R gives rise to serious procedural deficiencies and amount to suppression of material facts. The Respondent therefore submits that the Application is liable to be rejected on the ground of incompleteness and non-disclosure of documents material to this Adjudicating Authority's consideration.

- xxii. **Discretionary Rejection of the Application under Section 7(5)** - The Respondent submits that this Adjudicating Authority's, in exercise of its discretionary jurisdiction under Section 7 (5) of the Code, is empowered to reject an application where no default has occurred or where the application is otherwise incomplete. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352*, wherein it was held that the Adjudicating Authority may, upon considering the expediency of initiating CIRP and the overall financial position and viability of the corporate debtor, decline admission of a Section 7 application even where debt is established. Further reliance is placed on the decision of the NCLT, Ahmedabad Bench, in *HDFC Bank Ltd. v. John Energy Ltd., 2023 SCC OnLine NCLT 246*, wherein the Tribunal rejected an application under Section 7 despite the existence of debt, having found the corporate debtor to be a solvent and viable entity with substantial operational capacity and market presence. In view of the totality of the circumstances placed on record, the Respondent submits that the present Application is misconceived, not maintainable, and liable to be rejected at the threshold. It is respectfully submitted that, in the exercise of this Adjudicating Authority's discretionary authority, admission of the Application would be unwarranted and contrary to the objects and scheme of the Insolvency and Bankruptcy Code, 2016.

4. The Petitioner has filed rejoinder on 02.01.2025 stating as under:
- i. **Existence of Financial Debt acknowledged by the Corporate Debtor :-** It is not in dispute that the Corporate Debtor availed financial assistance from Financial Creditor No. 1 through the issuance of secured non-convertible debentures for an aggregate principal amount of Rs. 242,50,00,000 pursuant to the terms of a DTD dated 05.12.2016 and it is a Settled Law that the

amount disbursed by the Financial Creditor No. 1 by subscription to the Debentures constitutes a financial debt under Section 5(8)(c) of the IBC. Further, the debt availed under the DTD is duly admitted and acknowledged by the Corporate Debtor in its audited financial statements for FY 2021-22 which is at **Annex Z2** of the Petition and FY 2022-23 which is at **Annex Z2** which clearly notes that 80% of the principal amount and redemption premium is due to be repaid to Petitioner No.1 on 19.12.2023 (incorrectly stated as 31.12.2023).

- ii. **Corporate Debtor has admitted its default:** The Debenture were to be repaid as per the repayment schedule as specified in Clause 23 (Annex H/V1CP) read with Schedule XI of the DTD (Annex H/V2 CP) as per which the Corporate Debtor was required to repay the 80% of the principal amount and redemption premium on the Seventh anniversary of the closing date i.e., on 19.12.2023. Further, the Corporate Debtor in its letter dated 24.11.2022 has admitted that the redemption of the 80% debentures is due on 19.12.2023 and assured that this payment would be made. The Petitioner had also reported the default to NeSL. In response, the Corporate Debtor did not deny the amount due but only stated that in terms of the DTD, Corporate Debtor had 90 days to fulfil its debt obligations and inspite of 90 days period being over, Corporate Debtor has not repaid and the said statement amounts to admission of liability. Despite admitting that the 80% redemption of the principal amount under the Debentures was due and payable on 19.12.2023, the Corporate Debtor has admittedly committed default on 19.12.2023 and not paid total debt amount: Rs. 4,28,39,20,221 as of 23.05.2024. Moreover, the Clause 34.1.3 of the DTD states that where any payment of the coupon and/or outstanding principal or redemption premium is not funded by the promoters and/or subsidiaries in accordance with the debenture document, is an event of default and on occurrence of a payment default, there is no cure period provided under the DTD. The Corporate Debtor has produced no evidence to suggest that the payment that was admittedly due on 19.12. 2023 has been discharged and therefore default has taken place after the Corporate Debtor failed to make payment by 19.12.2023.

- iii. **The Judgement in Vidarbha Industries not applicable to the facts of this Case:** The contention of the Corporate Debtor that the decision of the Hon'ble Supreme Court in *Vidarbha Industries Power Limited vs. Axis Bank Limited (2022) 8 SCC 352* is squarely applicable to the present case is not correct as it is respectfully submitted that the ratio of the judgment of the Hon'ble Supreme Court in *Vidarbha Industries (Supra)* must be read in the facts and circumstances of the said case and in no manner applicable to the facts of the persistent default of the Corporate Debtor herein. Further, the Hon'ble Supreme Court in the matter of *M Suresh Kumar Reddy v. Canara Bank and Others 2023 SCC Online SC 608* has clarified that the ratio in *Vidarbha Industries* cannot be applied as *carte blanche* rule or as an exception to the ratio in *Innoventive Industries Ltd. v. ICICI Bank and Ors (2018) 1 SCC 407*. The relevant portion of the decision of the Hon'ble Supreme Court is as follows

"12. A Review Petition was filed by the Axis Bank Limited seeking a review of the decision of Vidarbha Industries on the ground that the Attention of the Court was not invited to the case of E.S. Krishnamurthy. While disposing of Review Petition by Order dated 22 September 2022, this Court held thus

"The elucidation in paragraph 90 and other paragraphs 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. To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes."

13. Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries and E.S. Krishnamurthy. The view taken in the case of Innoventive Industries still holds good".

- iv. **Financial Creditor has not committed repudiatory breach of the terms of the DTD and has subscribed to all Tranches which the Corporate Debtor had offered for subscription by complying with all condition**
Precedents: - Financial Creditor No.1 submits that it has subscribed to all debentures in respect of which the Corporate Debtor had issued an offer letter for which a compliance letter and subscription notice were issued. Corporate Debtor did not call upon Financial Creditor No. 1 to subscribe to any of the subsequent tranches and as per Clause 8.12 of the DTD, in respect of any

subsequent tranche (other than Tranche 1), it was upon fulfilment of all the relevant Conditions Precedent, Conditions Subsequent and Subsequent Tranche Conditions Precedent”, that the Corporate Debtor) was required to issue a “compliance certificate” along with a “subscription notice” calling upon the Debenture Holder to subscribe to the debentures under a particular tranche. However, Post December 2017, the Corporate Debtor did not call upon Petitioner No.1 to subscribe to the subsequent tranches of the debentures as per the process laid down under the DTD. Moreover, it is a settled position of law that for an argument of repudiatory breach to succeed, it would be necessary for the Corporate Debtor to first establish that it has performed its promises and obligations under the DTD which are first required to be performed in order for the Financial Creditor to subscribe to the debentures. As stated above, under the DTD, it was the Corporate Debtor who was responsible for issuing notice and calling upon the Petitioner No. 1 to subscribe to the debentures, which was clearly not issued. Further, without admitting that there has been a breach of DTD, the Corporate Debtor ought to have immediately raised the alleged issue contemporaneously and declined to perform its obligations under the DTD, i.e. immediately when the subsequent tranches were not subscribed to in the years 2017/2018 as per the Availability Period under the DTD but even after the end of the “Availability Period”, the Corporate Debtor has made payment towards principal, interest and even pre-payment dues up to 19.12.2023. Having made payments and admitted its liability, the Corporate Debtor cannot be belatedly permitted to reprobate on its own admissions and actions as there was no unconditional obligation upon the debenture holder to subscribe. Further without prejudice to the above and in any event, the entitlement of the debenture holder to enforce rights in relation to the debentures which they have already subscribed to is not in any way compromised or affected. Thus, the entire argument of the Corporate Debtor that the Financial Creditor No.1 has committed a repudiatory breach is a merely an afterthought.

- v. **Corporate Debtor has not complied with representation, warranties covenants, undertakings, indemnities, and conditions precedent relevant to each tranche:-** Financial Creditor No.1 has subscribed to all

debentures in respect of which the Corporate Debtor issued an offer letter for which a compliance letter and subscription notice were issued and there was no failure or breach whatsoever in subscribing to the subsequent tranches of the debentures. Further, Post December 2017, the Corporate Debtor has not at any point of time called upon Financial Creditor No.1 to subscribe to the subsequent tranches of the debentures as per the process laid down under the DTD because under Clause 5.1 of the DTD, obligation to subscribe to debentures was subject to satisfaction of Conditions Precedent and Conditions Subsequent, which were not satisfied and as per terms of Clause 8.12 of the DTD, in respect of any “subsequent tranche” (other than Tranche 1), it was upon fulfilment of all the relevant “Conditions Precedent, Conditions Subsequent and Subsequent Tranche Conditions Precedent”, that the Corporate Debtor was required to issue a “compliance certificate” along with a “subscription notice” calling upon the debenture holder to subscribe to the debentures under a particular tranche. The list of non-compliance of Condition Precedent, condition subsequent and other undertakings relevant to each tranche by Corporate Debtor is tabled at Para 23 and 24 of this Rejoinder. Moreover, it is pertinent to note that the Reply maintains a studied silence on why the Corporate Debtor did not take any action towards causing the debenture holders to subscribe to the subsequent tranches of debentures from December 2017 by calling upon them to subscribe to the additional/subsequent tranche in accordance with the mechanism prescribed in Clause 8.12 of the DTD. This makes it abundantly clear that the entire contention of non-subscription of subsequent tranches of the debentures is nothing but a frivolous afterthought.

- vi. **Financial Creditor has subscribed to Half Tranche for subscription as the same was only offered for subscription by the Corporate Debtor:** Regarding the contention of Corporate Debtor that the financial creditors have allegedly failed to subscribe to entire debentures under Tranche 3, it be noted that the Corporate Debtor had offered for subscription only a portion of debentures under Tranche 3 which was subscribed and the debenture holders have not breached the provisions of the DTD, on account of the subsequent tranches of the debentures not being subscribed as there was no

unconditional obligation on part of Petitioner No. 1 to subscribe to subsequent tranches of debentures. In fact the debenture holders have subscribed to all the offer letter/letters for subscription that were called for subscription.

- vii. **Suit instituted by Financial Creditors before Hon'ble Bombay High Court and Proceedings Relating to Challenge of the assignment deed before the Hon'ble Karnataka High Court have no impact on the present proceedings:** The Contention that the existence of debt is disputed and pending before the Bombay High Court in the suit initiated by the Financial Creditors and the present proceedings are not maintainable during its pendency is not valid in law because the rights of the financial creditors to initiate proceedings under the IBC is distinct and co-extensive with any contractual remedies available to such creditors and there is no requirement under the IBC for a financial creditor to abandon or exhaust its contractual remedies prior to initiating proceedings under Section 7 as the rights under the IBC are statutory in nature and may be pursued independently of any other pending proceedings because the exercise of parallel or simultaneous civil proceedings that are available to a lender does not preclude or in any manner restrict the creditor from invoking remedies under the IBC. In this regard, the Hon'ble NCLAT in the matter of *Amar Vora v. City Union Bank Ltd. 2022 SCC Online 276* has clearly held that the pendency of civil suit cannot be a ground for the Adjudicating Authority to not admit a Section 7 IBC application filed by the same party, when the debt and default has been established. Thus, the proceedings before the Bombay High Court and this Adjudicating Authority can run parallelly and are not inconsistent. Further, the Hon'ble Karnataka High Court vide order dated 9.05.2024 in COMAP No. 165 of 2024 and in COMAP No. 167 of 2024 has clarified that pending challenge to the assignment, a joint action may be taken by the Financial Creditors as the rights available under the DTD are not vitiated on account of a challenge to the debt assignment and there is no such condition that the proceedings can only be filed and not prosecuted further. Thus, it is clear that proceedings before the Commercial Court and the orders passed therein

would not result in a scenario where the Financial Creditors are prevented from exercising their legal rights under the DTD.

5. The Respondent has filed Additional Objections on 03.03.2025, contending the following:
 - i. During the pendency of the present Application and subsequent to the filing of the Reply, the Debenture Holders, including Piramal, unanimously instructed the Debenture Trustee, Axis Trustee Services Limited (“Axis”), to issue Notices dated 15.01.2025 to the Corporate Debtor and its subsidiaries, invoking the pledge created over securities pursuant to the DTD dated 05.12.2016. Copies of the Notices are enclosed as **Annexure A**.
 - ii. Further, by the said Notices, Axis invoked various share pledges and called upon, *inter-alia* the Corporate Debtor to discharge the amounts purportedly claimed within one day, failing which the pledged securities would stand enforced in terms of the DTD. Thereafter, the Corporate Debtor responded to the Notices vide its communication dated 17.01.2025, and simultaneously challenged the said Notices by filing Applications bearing Nos. IA 11/2025, 12/2025 and 13/2025 before the Commercial Court.
 - iii. The said Applications were disallowed by an order dated 25.02.2025, and while the detailed reasoned order had not been uploaded by the date of filing additional objections, a typed copy of the operative portion of the said order is placed on record as **Annexure D**. Notwithstanding the pendency of the present proceedings, the Financial Creditors, by issuing instructions leading to the Notices and invoking the contractual remedy of pledge enforcement, have effectively elected to pursue their contractual rights under the DTD. It is contended that having already invoked the statutory remedy under the IBC, the Financial Creditors have thereafter voluntarily opted for an alternative contractual remedy, thereby amounting to an abandonment, waiver, or election inconsistent with the continuation of the present proceedings.
 - iv. It is further submitted that by causing the issuance of the Notices and seeking to enforce the alleged contractual rights and benefits arising under the pledge documents, the Financial Creditors have voluntarily surrendered the advantages and privileges that would otherwise flow from the pendency of the present

proceedings. Accordingly, the Respondent contends that the present Petition is rendered unsustainable. The Respondent also refers to the communication dated 30.01.2025 from the Financial Creditors as further demonstrating their election and abandonment. A copy of the said communication is annexed as **Annexure E**. On these facts and submissions, the Respondent urged for dismissal of the petition with costs.

6. The Respondent has filed Additional Rejoinder on 26.03.2025, pursuant to the liberty granted by the Adjudicating Authority and stated the following:
 - i. **Additional Objections were filed belatedly to delay proceedings:** The Corporate Debtor had filed Additional Objections on 03.03.2025, after the hearing had already commenced and written submissions were directed to be filed on 07.01.2025 but the Corporate Debtor did not file its written submissions on time and instead sought repeated adjournments. Further, the additional objections filed by the Corporate Debtor raise no relevant factual or legal issues and are an attempt to delay the adjudication of the instant Petition.
 - ii. **Invocation of Pledge by the Debenture Trustee does not affect the maintainability of Section 7 Petition:-** The debt under the DTD was secured by share pledges in favour of Axis Trustee Services Ltd i.e. Debenture Trustee as pledged by the Corporate Debtor and other promoter/associate companies for the benefit of the debenture holders/Financial Creditors pursuant to the DTD and after a payment default on 19.12.2023 by the Corporate Debtor, the Debenture Trustee invoked the pledge under instructions issued on 10.01.2025 and 14.01.2025 by Omkara ARC and Piramal respectively and this action is legal being fully permitted by Clause 36 of the DTD, and in line with the Interim Order of the Hon'ble Karnataka High Court dated 09.05.2024, which expressly allowed the Financial Creditors to take action for violation of the DTD. Further, Invocation of pledge is an independent contractual remedy and does **not** bar or affect initiation of CIRP under Section 7 of the IBC and Enforcement of security and insolvency initiation are parallel, independent rights. The Debenture Trustee issued Invocation Notices on 15.01.2025 after the Corporate Debtor failed to cure the default.

- iii. **On Allegations of Election of Remedies/Waiver:-** The Corporate Debtor's contention that invocation of pledge amounts to abandoning the remedies under the Code is incorrect as IBC does not require a creditor to forgo contractual rights before initiating CIRP and Creditors can pursue multiple and simultaneous remedies to protect their interests.
7. Before adverting to specific contentions raised in the matter, the undisputed facts are stated below:
- A. On 01.12.2016, the board of Directors of the Corporate Debtor in their Extra Ordinary General Meeting authorised the Corporate Debtor to issue, on a private placement basis 90,000 Redeemable Secured Non-Convertible Unlisted Debentures of the face value of Rs.1,00,000 aggregating to Rs. 900,00,00,000 and on 5.12.2016, DTD was executed between the Corporate Debtor, its promoters and Axis Trustee Services Limited who was appointed as the Debenture Trustee and as per Clause 5 read with Schedule IV of the DTD the issuance of the Debentures was divided into six tranches aggregating to a principal amount of Rs.750,00,00,000 and one optional tranche amount of Rs. 150 00,00,000 as per Schedule mentioned at Para 2 (iii)
- B. Subsequently the Financial Creditor fully subscribed to first two Tranches of Non- convertible Debentures but Subscribed only half of Tranche 3. Further, the Financial Creditor No.1 also accepts that Corporate Debtor defaulted on the payment of interest which was due on 30.09.2021 but subsequently the Corporate Debtor cured the said default in the month of November 2021 and the Corporate Debtor had committed another payment default by failing to make the interest payment which was due and payable on 30.09.2023 but the said default was cured in the month of October 2023.
8. Heard arguments from Ld. Senior Counsels for the parties and carefully perused the material on record as well as the relevant legal proposition.
9. The Respondent has relied on the following precedents in support of their case.
- a. *Kotak Mahindra Bank vs. Kunal (Structure) India Pvt. Ltd. 2023 SCC Online NCLT 245:*
 - b. *State Bank of India vs. Krishidhan Seeds Pvt. Ltd. 2022 SCC OnLine NCLT 324*
 - c. *Greenhills Exports (P) Limited and Ors. Vs. Coffee Board, LR 2001 KAR 2950*
 - d. *HDFC Bank Ltd vs. John Energy Ltd 2023 SCC OnLine NCLT 246:*
 - e. *Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt Ltd, (1983) 3 SCC 379*

f. Indus Biotic (P) Pvt Ltd vs Kotak India venture (offshore funds) - (2021) 6 SCC 436

10. The Petitioners have relied up on the following decisions to support their contentions.

- a. Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 (para 58)*
- b. Axis Bank Limited vs Vidarbha Industries Limited, Review Petition (Civil) No. 1043 of 2022 (2023) 7 SCC 321 (para 6)*
- c. Punjab National Bank (International) Limited v. M/s MBL (MP) Toll Road Company Limited, CP (IB) No.423/(PB)/2023, NCLT Delhi (para 11)*
- d. M Suresh Kumar Reddy v. Canara Bank and Others, 2023 SCC Online SC 387 (paras 9,10,11)*
- e. Shanti Builders v. CIBA Industrial Workers' Cooperative Housing Society Limited, (2012 (4) Mh.L.J.) (paras 57, 58, 59, 60)*
- f. National Insurance Co. Ltd. v. Seema Malhotra and Ors., 2001 3 SCC 151 (Paras 15, 16, 17,18, 19)*
- g. Nathulal V Phoolchand, (1969) SCC Online SC 409 (Para 12)*
- h. Anil Gupta v. Atul Kumar Gupta & Ors., 1981 SCC OnLine Del 207 (paras 11, 12, 13)*
- i. Amar Vora v. City Union Bank Ltd., 2022 SCC OnLine 276 (Paras 6, 8,9)*

The Petitioners have explained the Case Law cited on behalf of Corporate Debtor in their objections by stating as follows:

- a. Kotak Mahindra Bank v. Kunal (Structure) India Pvt. Ltd., 2023 SCC Online NCLT 245:* In this case, there was an arbitral award in favour of the Corporate Debtor significantly exceeding the financial debt claimed by the financial creditor. On that basis, the Section 7 IBC proceedings were kept in abeyance for six months.
- b. State Bank of India v. Krishidhan Seeds Pvt. Ltd., 2022 SCC OnLine NCLT 324:* In this case, the Corporate Debtor did not contest the debt and default. However, it sought some time for repayment of debt on the basis that it has made significant efforts to clear the dues of other creditor. On this basis, the NCLT decided to keep the petition in abeyance for a period of 6 months with a clear direction that failure to repay the debt would result in admission into CIRP.
- c. HDFC Bank Ltd v. John Energy Ltd, 2023 SCC OnLine NCLT 246:* In this case, although HDFC Bank had applied for commencement of CIRP, certain other financial creditors had agreed to consider the restructuring proposal submitted by the debtor which had also received RP 4 rating from credit rating agency. On this basis, the NCLT decided not to admit the Section 7 IBC application.
- d. Greenhills Exports, ILR 2001 KAR 2950:* This decision dealt specifically with the question of whether a claim for damages could be treated as a debt. The Court held that such a claim becomes a debt only after adjudication and quantification

by a competent court. In the present case, the Corporate Debtor's liability does not arise from any claim for damages, but from its contractual obligation under the DTD to repay 80% of the principal and redemption premium by 19.12.2023. Accordingly, Greenhills Exports has no application to the facts at hand.

- e. Indus Biotech Kotak India venture (offshore funds), (2021) 6 SCC 436* : It was rendered in the context, whether a Section 7 IBC application is admissible if there is also an application for referring an issue involving the crystallisation of debt for arbitration. The factual matrix and also the findings in Indus Biotech is entirely not applicable to the present case. In contrast, the present case involves a clear and admitted financial debt and default. The existence of debt and default has been sufficiently demonstrated by the Financial Creditors as stated above.
- f. Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt Ltd, (1983) 3 SCC 379*: This is a case where the creditor in question was a state corporation against whom a writ petition was filed by the borrower on the ground that despite the promise by the lender to lend and despite all conditions being met, the lender which was a State Financial Corporation did not disburse the loan in favour of the borrower. The Court's decision was rendered in the context of the State Corporation being an instrumentality of state had reneged from its promise. It has no applicability in the facts of the present case.

11. The Respondent had filed following citations on 08.07.2025:

- a. Lakshmiratan Engineering Works Limited vs Assistant Commissioner (Judicial)-I, Sales Tax Kanpur, (1967) SCC Online SC 140*
- b. Martin & Harris Limited vs VI th Additional Distt. Judge and Others, (1998)1 SCC 732*
- c. Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal, (2021) 6 SCC 366*
- d. K.S. Sreenivasan v. Landmark Housing Projects (India) Pvt. Ltd., 2019 SCC OnLine NCLT 28418*
- e. Vipul Limited v. Solitaire Buildmart Pvt. Ltd., 2020 SCC Online NCLAT 620, para 25-26*
- f. Ashok Sachdev v. Call Express Construction (India) Pvt. Ltd., 2021 SCC Online NCLT 2845*

Further, the Respondent has explained the Case Law cited by the Petitioners by stating as follows:

- a. Innoventive Industries Ltd vs ICICI Bank, (2018) 1 SCC 407, para 27-30*: This Case cited by the Financial Creditor is in support of the Corporate Debtor's

contentions as it has held that the adjudicating authority while admitting a petition under Section 7(5) of the Code must satisfy itself that both a debt and default has occurred in law and facts of the matter. In the facts of the present case, no default has occurred due to the failure of the FCs to fulfil its reciprocal obligations under the DTD which sets at large the date of redemption, ergo, the dual test of debt and default remains unsatisfied.

- b. *Axis Bank vs Vidarbha Industries Limited, (2023)7 SCC 321, para 3:*** Reliance on the judgment is misplaced as it simply states that observations in a judgement must not be read as provisions of a statute. The above-mentioned judgement in no manner sets aside the position of law as laid down in *Vidarbha Industries Limited vs Axis Bank (2022) 8 SCC 352* but simply clarifies it by reiterating that the adjudicating authority under Section 7(5) of the Code has only two options either to admit or reject the application. In the instant case, the Corporate Debtor has already demonstrated why the present Petition merits to be rejected.
- c. *Punjab National Bank (International) Limited vs M/s MBL (MP) Toll Road Company Limited (2025) SCC Online NCLT 58:*** This judgment is distinguishable on facts as there were several communications by the corporate debtor admitting the debt, which is not the case in the present matter. CD has been disputing the debt since 2021. Secondly, the corporate debtor on one hand has admitted part debt and on the other hand is stating that the amount is not due and would be paid out of future annuities. In the referred case, the corporate debtor had admitted to the existence of a debt as well as default, which is not applicable to the facts and circumstances of the present case.
- d. *Shanti Builders vs CIBA Industrial Workers' Co-operative Housing Society Ltd, (2012) 4 MhL.J 614:*** This is not applicable to the facts of the present case as the judgement was passed after a detailed evidentiary hearing and not summary proceedings like the present case and it holds that reciprocal obligations under an agreement must be performed in the order as laid down in the agreement executed between by the parties, which is in favor of the Corporate Debtor's contentions that Financial Creditors have failed to subscribe to the tranches as per the DTD due to which the Corporate Debtor stands discharged of its reciprocal obligations under the DTD.

- e. National Insurance Co. Ltd. vs Seema Malhotra and Ors (2001) 3 SCC 151:* This case pertains to a contract of insurance and is completely distinguishable on the facts and circumstances of the present case and it was held that in the event an insured has failed to pay the premium as promised, then the insurer (other party) need not perform his part of the promise under the agreement, which supports Corporate Debtor's contention that it stands discharged of its reciprocal obligations due to the failure of the FC in subscribing all tranches under the DTD.
- f. Nathulal vs Phoolchand, (1969) 3 SCC 120:* The Reliance of the Financial Creditors on this case is misplaced because the judgement has been passed after detailed evidentiary hearing and not in summary proceedings and it was held that reciprocal obligations under a contract have to be performed in a certain sequence/order, in the event one of the parties does not comply with the obligations under the contract it cannot hold compliance of its reciprocal obligations without performing its obligations, which favours the Corporate Debtor's contentions that the purpose of issuance of debentures is clearly set out in Clause 6 of the DTD i.e. infusion of equity and/or shareholders loan by the issuer into new projects, pipeline projects and existing projects, if applicable and corporate overheads as per the business plan and DTD. Since the order in which the DTD is to be performed is not expressly fixed, the rigors of Section 52 of the Contract Act shall be applicable which states that the contract shall be performed in that order which the nature of the transaction requires as the Financial Creditors were obligated to first subscribe to all the tranches of the DTD and thereafter, the Corporate Debtor was liable to redeem the debentures.
- g. Anil Gupta vs Atul Kumar Gupta & Ors, (1981) SCC Online Del 207* The judgement is distinguishable on facts as the two parties i.e., Anil Gupta and "other parties", who had entered into an agreement for transfer of shares subject to fulfilment of two conditions and out of the two obligations one was of payment to the other party, which was completed and accepted by the other party. The second obligation pertained to release of guarantees from the bank, which was fulfilled with some delay in the time period. The Court held that since Anil Gupta had paid substantial amount under the Agreement which was accepted without any protest and the other obligation was also fulfilled, the other parties ought to transfer the shares under the Agreement. In the present matter, it is admitted fact that the FCs

have only subscribed to 2 and a half tranches i.e., INR 242.5 Crore out of a total of INR 750 Crore plus INR 150 Crore, which amounts to only 1/3rd of the total amount. Further, the Corporate Debtor has been disputing the debt since 2021 and in no manner has accepted the failure of the Financial Creditors in complying with its obligations under the DTD.

12. This Petition was filed on 14.06.2024 and the date of default as mentioned by the Financial Creditors in the Petition is 19.12.2023. Although the financial Creditors claim that on 19.01.2024 the Corporate Debtor, in response to NeSL queries, did not dispute the liability and only stated that a period of 90 days is available under the DTD to make payment of the outstanding debt and thus admitted its Debt yet the Record of Default issued by Information Utility amplifies that **Debt is Disputed**.
13. The averment that the debentures offered by the Corporate Debtor under the DTD and subscribed to by the Financial Creditor No. 1 is also duly acknowledged and admitted in the audited financial statements of Corporate Debtor for FY 2021-22 and FY 2022-23 as the audited financial statement for FY 2022-23 clearly notes that 80% of the principal amount and redemption premium is due to be repaid to Petitioner No.1 on 31.12.2023 (incorrectly since as per the DTD the correct due is 19.12.2023), is countered by the Corporate Debtor by citing the reference to be misplaced as the balance sheet merely sets out the terms of the DTD and does not amount to admission of any default by the Corporate Debtor as held by the Hon'ble Supreme Court in *Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal, (2021) 6 SCC 366* that entries in the balance sheet can constitute an acknowledgment under Section 18 of the Limitation Act only if they are unequivocal. Further, in para 15 of the judgement it was observed that acknowledgement under the Limitation Act only states that the debt has been renewed and does not constitute as a default. In the present case the Corporate Debtor's balance sheet does not admit any default and only sets out the date of 80% redemption of the debentures as per Schedule IX of the DTD and the entries in the balance sheet of the Corporate Debtor in no manner amounts to admission of any default. In light of the opposing assertions of the Parties it is pertinent to look into the relevant portion of the financial statement of Corporate Debtor for FY 2022-23 about entries asserted by the Financial Creditor in the balance sheet of the Corporate Debtor which is mentioned below:

6 Other long-term borrowings		As at 31 March 2023	As at 31 March 2022
Secured			
a) Non convertible debentures			
Fireval Capital & Housing Finance Limited 3,500 NCDs of ₹100,000 each issued on 7 July 2017, (2022: 3,500 NCDs of ₹100,000 each issued on 7 July 2017); 5,500 NCDs of ₹100,000 each issued on 18 December 2017, (2022: 5,500 NCDs of ₹100,000 each issued on 18 December 2017) and 2,750 NCDs of ₹100,000 each issued on 20 December 2016, (2022: 2,750 NCDs of ₹100,000 each issued on 20 December 2016) and 12,500 NCDs of ₹100,000 each transferred by PHL Fireval Limited -Maturing on 20% on 31 December 2022 and 80% on 31 December 2023		-	24,25,000
Baboon Investments Holding B.V 3,500 NCDs of ₹100,000 each issued on 19 July 2017, (2022: 3,500 NCDs of ₹100,000 each issued on 19 July 2017); 5,500 NCDs of ₹100,000 each issued on 21 December 2017, (2022: 5,500 NCDs of ₹100,000 each issued on 21 December 2017) and 15,250 NCDs of ₹100,000 each issued on 20 December 2016 (2022: 15,250 NCDs of ₹100,000 each issued on 20 December 2016) -Maturing on 20% on 31 December 2022 and 80% on 31 December 2023		-	24,25,000
			48,50,000
<p>Until expiry of 24 months from the closing date, an annual coupon of 6% per annum, subject to availability of receivable and after the expiry of 24 months from the closing date, an annual coupon of 6% per annum, 7% per annum, 8% per annum, 9% per annum and 9% per annum respectively for each consecutive year from the closing date, accruing on a daily basis and computed on the basis of a 365 days' year or where the year is a leap year, a 366 days' year and the actual number of days elapsed on the outstanding principal, payable on each Coupon payment date to each of the debenture holders on the debentures subscribed by the debenture holders until redemption provided that the Coupon together with the payment of the outstanding principal and redemption premium shall result in an IRR equivalent to 16% - provided that in case early redemption premium is applicable, such IRR shall be calculated as per the method set out in the definition of 'Early Redemption Premium'.</p> <p>Secured by charge on the designated account with Yes Bank and all entitlements relating thereto and/or arising therefrom, present or future and pledge of the following investments held by the Company in the following three subsidiaries :-</p> <p>WPA Clean Energy Private Limited - 1,00,000 Equity shares of ₹ 100 each fully paid up - 1,07,64,770 Optionally convertible preference shares (OCCPS) of ₹ 100/- each fully paid up Atria Wind Private Limited - 9,999 equity shares of ₹ 10 each fully paid up - 17,418 Compulsorily convertible debentures (CCD) of ₹ 1,00,000/- each fully paid up Atria Solar Private Limited - 58,74,415 Compulsorily convertible debentures (CCD) of ₹ 100/- each fully paid up - 1,000 equity shares of ₹ 100/- each fully paid up Further secured by the pledge of 24,69,454 equity shares of ₹ 100/- each and 7,939 Compulsorily convertible debentures of Rs. 1,00,000/- each in Atria Brindavan</p>			

Thus, a bare perusal Balance sheet of the Corporate Debtor as on 31.03.2023 states:

Until expiry of 24 months from the closing date, an annual coupon of 6% per annum, subject to availability of receivable and after the expiry of 24 months from the closing date, an annual coupon of 5% per annum, 7% per annum, 8% per annum, 9% per annum and 9% per annum respectively for each consecutive year from the closing date, accruing on a daily basis and computed on the basis of a 365 days' year or where the year is a leap year, & 366 days year and the actual number of days elapsed on the outstanding principal, until redemption provided that the Coupon together with the payment of the outstanding principal and redemption premium shall result in an IRR equivalent to 16%, provided that in case early redemption premium is applicable, such IRR shall be calculated as per the method set out in the definition of Early Redemption Premium.

From the above, it is observed that there is a condition of payment even after the Closing date but the Closing date in the contract is a condition or Caveat as it is not clear whether contract is completed or not as it is not in dispute that Financial Creditor No.1 has not subscribed to all tranches. The Petitioner argued that since the debt has

been mentioned in Balance Sheets of the Corporate Debtor, the same amounts to acknowledgement of debt and thus attracts the provisions of Section 18 of the Limitation Act, 1963. In this regard, we are of the view that the reliance of Corporate Debtor on *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal and Anr (Supra)*, clinches the issue, wherein it was held that it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is *unequivocal* or has been entered into with caveats, which then has to be examined on a case by case basis to establish whether an acknowledgement of liability has, in fact, been made.

14. Hon'ble NCLAT in *Asset Reconstruction Company (India) Ltd. v. Uniworth Textiles Ltd., dated 10.07.2023, (2023) ibclaw.in 443 NCLAT*, has held that

32.It is therefore evident that mere entry in the Balance Sheet cannot be taken as unqualified acknowledgment of the debt. However, it may also not be correct to take every note or caveat regarding entries made in the Balance Sheet as ground to denying acknowledgement of debt in order not to extend the limitation period from such acknowledgment period. It is therefore desirable that while looking such entries of debt amounting to acknowledgment, one has to consider the overall scenario which may be evident from Director's Report, Auditor's Report, and notes to the accounts etc. It may also be relevant to consider the entire series of events starting from such loans/debts to the filing of application under section 7 of the Code, to gauge the true intent of such entries and caveats, if any, which impact the intended acknowledgements or genuine denial of liability on part of the Corporate Debtor. While doing this examination, it may be worthwhile to look into the overall eco system of such transactions which may help in understanding the impact on limitation period based on such acknowledgements.

15. Therefore, considering the aforesaid decisions of the Hon'ble Supreme Court and Hon'ble NCLAT it needs to be discerned whether the entry made in Balance Sheet is unequivocal or having caveats. In the present case perusal of the Balance Sheets of the Corporate Debtor for the Financial Year 2022-23 juxtaposed with the provisions of Debenture Trust Deed reflects that the former is not a straightaway admission of liability but subject to the terms and conditions contained in parent instrument i.e. DTD which provides for redemption under specified circumstances. It would be exaggerated to assume that while the release of tranche payments were subject to compliance/fulfilment of conditions but the redemption at any time and under any circumstances did not call for any obligation performance by the debenture holders. Of

course, had all the stages of DTD been performed/observed as stipulated, probably the Debenture Issuer would have antecedent rights on the redemption date/period. In this case, the financial creditor having failed to perform its obligation in subscribing the debentures as per tranches terms has mutilated the DTD and seen in this background, the balance sheets of Corporate Debtor cannot be said to amount to acknowledgement of liability.

16. The Financial Creditor has stated that it has subscribed to Two and half Tranches of Non-Convertible Debentures and has not subscribed to other Tranches of Non – convertible Debentures because the Corporate Debtor did not call upon them to subscribe to any of the subsequent tranches upon fulfilment of all the relevant “Conditions Precedent, Conditions Subsequent and Subsequent Tranche Conditions Precedent”. Upon such fulfilment of conditions, the Corporate Debtor was required to issue a compliance certificate along with a subscription notice calling upon the Debenture Holder to subscribe to the debentures under a particular tranche. Because after December 2017, The Corporate Debtor did not call upon Petitioner No.1 to subscribe to the subsequent tranches of the debentures as per the process laid down under the DTD.

The Corporate Debtor in its objections has denied the same and further stated that the Financial Creditor No.1 subscribed only to 2.5 tranches, and that the subsequent tranches were not subscribed despite the Corporate Debtor having fulfilled the conditions precedent. The Corporate Debtor has continued to meet its obligations under the DTD, including coupon payments, principal repayments, redemption premiums, and interest payments, amounting in aggregate to Rs.393,47,44,809. The Respondent therefore submits that, having regard to Section 52 of the Indian Contract Act, 1872, its reciprocal obligations stand affected by the non-subscription of the remaining tranches.

Although the terms of DTD are sacrosanct yet when the Corporate Debtor had been meeting all the coupon, interest payments and principal repayment terms substantially in time stipulated therein and complied with other requisite conditions and cleared the ground for further tranche to be released, so to say, the Financial Creditor could also have communicated in respect of the subscription notice given that no such notification was issued for subscribing to part of third tranche.

17. Thus, the question coming to fore is “Whether the Debt is due and Payable in the light of non-subscription to all tranches by the Financial Creditor No.1.” In this regard it is important to note that the definition of ‘Tranche’ in DTD clearly states that it means Tranche 1, Tranche 2, Tranche3, Tranche 4, Tranche 5 and Tranche 6 and there are conditions precedent relevant to each tranche mentioned therein but no provision for part payment of any tranche or condition precedent for subscription of half tranche. Thus, the Corporate Debtor by issuing a compliance certificate cum subscription notice for Tranche 3 has fulfilled its condition Precedent for Tranche 3 and the Financial Creditor by partly subscribing to Tranche 3, a total of the 5500 Debentures amounting to INR 55,00,00,000/- out of Subscription amount up to Rs. 200,00,00,000/- (Rupees Two Hundred Crores); has implicitly agreed with the Claim of Corporate Debtor that it has fulfilled the Conditions Precedent in respect of Tranche 3 and there is deficiency on part of the Financial Creditor No.1 in not subscribing the other half of the Tranche 3.

Though, the Financial Creditor states that there is no unconditional obligation on it to subscribe to all tranches because all condition precedents relevant to subsequent Tranches were not fulfilled by the Corporate Debtor and the list of non-compliances of Condition precedent to subsequent tranches have been mentioned at Para 23 of the Rejoinder but the act of Financial Creditor No.1 by partly subscribing to Tranche 3 gave an indelible impression that contrary to their claim that Full Tranche 3 was offered for subscription, Corporate Debtor had sought subscription of full Tranche 3 as **there is no provision for certificate of compliance for Half tranche as per DTD** but was not obliged. The Financial Creditor subscribing to half of Tranche 3 categorically accepts compliance of conditions precedent therefor. The Adjudicating Authority having Summary Jurisdiction need not delve into determination of disputed questions about condition precedent and Condition subsequent having been fulfilled for each tranche in view of contrary assertions by the Financial Creditors and Corporate Debtor and would possibly call for a trial.

18. The background of the Financial Creditors filing a Commercial Suit bearing number No. 26823 of 2024 along with an Interim Application (L) No. 27131 of 2024 before Hon'ble Bombay High Court for recovery of INR 464,67,41,242 along with interest at the rate of 19% per annum ahead of this petition can be found in the communication exchanged by the parties for change in IRR. Since the Corporate Debtor did not agree

to the proposal of Financial Creditor for enhancing the rate of IRR as they wished it to be, hardened their stance and it led to release of only part of third tranche so that the financial creditor may not be caught on wrong foot. That strategic move of the Financial Creditor however backfired and instead of coercing the Corporate Debtor to concede to demanded terms, it stalled the DTD movement. The Financial Creditor then must have remained in two minds as to the action to be initiated for realisation of debt. A conscious decision to go ahead with recovery proceedings then was taken by the Financial Creditor. It is only as a secondary, albite independent remedy available, measure that the Insolvency petition has been filed, probably to arm twist the corporate debtor to cough up money more than a fair intention to seek resolution. We need not reiterate that resort to IBC is not a venture for debt recovery. It needs to be emphasized that the corporate debtor is a going concern and a solvent entity having stake in several states and is collaborating in Central & State Govt projects including supply of essential amenity to public at large.

19. As a corollary of above discussion, the **Company Petition bearing CP (IB) No.185/BB/2024 is dismissed** for want of making out a clear case of debt having become due and payable by the Corporate Debtor and it being primarily an endeavour of debt recovery besides other points indicated above.
20. This Order however, shall not preclude the Petitioner from initiating and/or continuing other legal remedies that may be available/availed.

-Sd/-

RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd/-

SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)