



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT - IV**

**CP No.: IB 823(ND)/2022**

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

**IN THE MATTER OF:**

**M/s ENCORE ASSET RECONSTRUCTION COMPANY PRIVATE LIMITED**

**...Financial Creditor / Applicant**

**VERSUS**

**M/s NEW TECH IMPORTS PRIVATE LIMITED**

**...Corporate Debtor / Respondent**

**Pronounced on: 17.04.2025**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE  
MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For Applicant : Mr. Sudhir Makkar, Senior Advocate, Ms. Sanya  
Lamba, Adv.

For Respondent : Mr. Anuj Mirdha, Mr. Krish Kalra, Ms. Rashmi  
Arora, Advs.

**ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by City Union Bank, seeking to initiate Corporate Insolvency



Resolution Process (“**CIRP**”) against M/s New Tech Imports Private Limited [CIN: U74899DL1995PTC067511] (“**Corporate Debtor**”).

2. Further an Application bearing IA No. 5148 (ND) of 2023 was filed by the M/s. Encore Asset Reconstruction Company Private Limited, being the Assignee of the loan issued by City Union Bank to the Corporate Debtor seeking substitution of the name as the Applicant and to further take on record the amended memo of parties. This Adjudicating Authority, allowed the said IA bearing No. 5148 (ND) of 2023 vide its Order dated 09.01.2024. (Order dated 09.01.2024 – Page 18 of the Rejoinder). And hence M/s. Encore Asset Reconstruction Company Private Limited shall be referred to as (“**Applicant**”) in the present Order.
3. The Corporate Debtor was incorporated on 19.04.1995, under the Companies Act, 1956. Its registered office is at 1/778' Nichlosan Road, Kashmere Gate, New Delhi -DL -110006. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was registered on 16.11.2022 before this Adjudicating Authority. The amount of default as per Form I part IV of the Petition sums upto an amount of **Rs. 28,16,38,921/-** (Rupees Twenty-Eight Crores Sixteen Lakhs Thirty-Eight Thousand and Nine Hundred Twenty-One) as on 31.08.2022.
5. Ld. Counsel for the Applicant submits that:
  - a. FC granted financial facilities to the CD vide Sanction Letter dated 17.11.2014 which was time and again modified/revived vide Sanction Letters/Revival Letters dated 02.08.2018, 13.06.2019, 13.07.2020,08.09.2020,30.03.2021, 15.04.2021 for a total sum of Rs. 23,85,32,000/-.



b. The particulars of the Financial Facilities provided by the FC to the CD time and again are here as under:

a. 2014

Sanction Letter dated 17.11.2014 ( <b>Page 41 of the Petition</b> )	A. OLCC (Open Loan Cash Credit) – Rs. 10 crores
Demand Promissory Note for Rs. 10 crores ( <b>Page 49 of the Petition</b> )	B. Working Capital Facilities – Supply Bills Discounting – Rs. 2.35 crores
Agreement of Loan cum Hypothecation dated 17.11.2014 ( <b>Page 50 of the Petition</b> )	LCBG – Rs. 1 Crore
Guarantee Agreements dated 17.11.2014 ( <b>Page 74, 84 of the Petition</b> )	<b>TOTAL Facilities – Rs. 13,35,00,000/- (Page 51)</b>
Memorandum of deposit of Title Deeds dated 19.11.2014 ( <b>Page 94 of the Petition</b> )	Interest @ 11% ( <b>Page 53</b> )

b. 2018

Sanction Letter dated 02.08.2018 ( <b>Page 116 of the Petition</b> )	A. Renewal of OLCC (Open Loan Cash Credit) – Rs. 10 crores ( <b>Page 116</b> )
Demand Promissory Note dated 03.08.2018 of Rs. 8 crore ( <b>Page 121 of the Petition</b> )	
Supplemental Agreement of Loan cum Hypothecation dated 03.08.2018 ( <b>Page 144 of the Petition</b> )	B. Enhanced Working Capital Facilities – Foreign LC – Rs. 8 crores ( <b>Page 117, 155</b> )
Guarantee Agreements dated 03.08.2018 ( <b>Page 122, 132 of the Petition</b> )	<b>TOTAL Facilities – Rs. 18,00,00,000/-</b>
Memorandum of deposit of Title Deeds ( <b>Page 164 of the Petition</b> )	Interest @ 11% ( <b>Page 116</b> ) Due Date – 31.07.2019 ( <b>Page 116, 117</b> )



c. 2019

Sanction Letter dated 13.06.2019 ( <b>Page 185 of the Petition</b> )	A. Renewal of OLCC (Open Loan Cash Credit) – Rs. 10 crores ( <b>Page 188</b> )
Demand Promissory Note for Rs. 1 crore ( <b>Page 196 of the Petition</b> )	B. Renewal of Working Capital Facilities –
Supplemental Agreement of Loan cum Hypothecation dated 14.06.2019 ( <b>Page 188 of the Petition</b> )	Rs. 8 crores ( <b>Page 188</b> )
Guarantee Agreements dated 14.06.2019 ( <b>Page 197, 202 of the Petition</b> )	C. Additional Working Capital Facilities –
Confirmation of Mortgage dated 14.06.2019 ( <b>Page 209 of the Petition</b> )	OSL Special – Rs. 1 crore ( <b>Page 185, 190</b> )
	<b>TOTAL Facilities – Rs. 18,00,00,000/-</b>
	Interest @ 11.5% ( <b>Page 190</b> )

d. 2021

Sanction Letter dated 30.03.2021 ( <b>Page 222 of the Petition</b> )	A. Renewal of OLCC (Open Loan Cash Credit) – Rs. 10 crores ( <b>Page 226</b> )
Demand Promissory Note for Rs. 3.5 crores ( <b>Page 224 of the Petition</b> )	B. Enhanced OLCC Adhoc – Rs. 3.50 crores ( <b>Page 222, 228</b> )
Supplemental Agreement of Loan cum Hypothecation dated 30.03.2021 ( <b>Page 225 of the Petition</b> )	C. Renewal of Working Capital Facilities –
Guarantee Agreements dated 30.03.2021 ( <b>Page 234, 239 of the Petition</b> )	Rs. 9 crores ( <b>Page 226</b> )
Letter of Revival – Secured Assets dated 15.04.2021 ( <b>Page 244 of the Petition</b> )	<b>TOTAL Facilities – Rs. 21,50,00,000/-</b>
	Interest @ 13% ( <b>Page 228</b> )

c. The CD has duly acknowledged the outstanding debt of Rs. 21,31,27,507/- calculated as on 13.07.2020 vide its Confirmation of Balance (Page 216 of the Petition).

d. CD in their balance sheets submitted with ROC for the FY ending March 31, 2020 and March 31,2021 has acknowledged the secured loans/borrowings from FC for amounts of Rs. 21,66,64,927/- and Rs. 24,08,15,310/- respectively. (FORM AOC-4 for the FY 2019- 2020 and 2020-2021 at Page 91, 105 of the Rejoinder)



- e. The Corporate Debtor started defaulting in payment of the outstanding dues pertaining to the repayment! instalments due and hence the Financial Creditor was constrained to Re-Call the outstanding Loan amount for repayment. The Applicant Bank recalled the loan, vide Loan Recall Notice dated 25.06.2021 thereby calling upon the Corporate Debtor 1Guarantors to pay the entire dues of Rs. 24,35,04,949/-, calculated as on 25.06.2021 together with further interest, liquidated damages thereon at the contractual rates.
- f. Due to repeated defaults by the Corporate Debtor, the Financial Creditor finally declared the account of the Corporate Debtor Company as NPA on 09.05.2021 and sent a Statutory Notice dated 16.07.2021 under the Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor and the Guarantors.
- g. Despite several efforts being made by the Applicant Financial Creditor numerous times, the Corporate Debtor failed each time after itself confirming the admitted due & payable outstanding Financial Debt. And hence, there is no Contractual bar on any of the Lender Bank, Signatory/ Non-Signatory, to initiate Insolvency proceedings and for appointment of an Interim Resolution Professional against the Corporate Debtor herein, seeking the Corporate Insolvency Resolution Process for inviting III, 1 1 ; Resolution Plans and other opportunities through the process as prescribed under the Insolvency & Bankruptcy Code, 2016.
- h. The Corporate Debtor/ Respondent Company has failed and neglected to pay the said admitted sum of Rs. 27.78 crores comprising of the



principal amount along with penal interest, calculated from the date of disbursement upto 26.07.2022 and thereon.

- i. The CD itself has filed the Bank Account Statements along with its reply for the 3 different Loan Accounts maintained by the CD with the FC. The same totals and acknowledges the total outstanding amount of Rs. 24,08,15,310/- due & payable by the CD to the FC. (Page 370, 373, 374 of the Reply filed by the CD).
- j. NESL Report dated 19.09.2022 has been filed by the FC (Page 277 of the Petition). The Debt is “Disputed” and marked “Red” by the CD with the reasons mentioned that the Hon’ble DRT is of the opinion that no default has been committed by the CD. However, the CD has failed to place on record any such Order/ Direction/ Observation of the Hon’ble DRT.

6. Replying to the averments of the Ld. Counsel for the Applicant, the Ld. Counsel for the Corporate Debtor submits the following:

- a. It is submitted at the outset that the Corporate Debtor (CD) is a registered Micro, Small, and Medium Enterprise (MSME), as evidenced by Annexure R/9 of the Reply (Pg No. 217 to 228). The MSME status of the CD is a crucial factor that warrants consideration in the present proceedings.
- b. **Date of Classification as NPA Cannot Be Considered as Date of Default**
  - a) The alleged Financial Creditor (FC), at S. No. 2 of Part IV of the Section 7 Petition (@ Pg No. 14 of the Section 7 Application) and Para 2(b) of the Rejoinder dated 03.04.2024 (@ Pg No. 5 of the Rejoinder), unequivocally pleaded that the date of default is



09.05.2021—the date on which the accounts were classified as Non-Performing Asset (NPA).

b) The relevant extracts from Part IV of the Section 7 Petition and the Rejoinder dated 03.04.2024 clearly establish that the Financial Creditor itself has asserted that the date of default coincides with the classification of the account as NPA, a fact that has not been denied or disputed by the FC or the lending Bank.

c) In response, it is submitted that the date of NPA, i.e., 09.05.2021, cannot be considered as the date of default for the purpose of invoking the jurisdiction of this Hon'ble Adjudicating Authority (Ld. AA) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).

d) The Hon'ble Supreme Court in *Laxmi Pat Surana v. Union Bank of India & Anr.* [(2021) 8 SCC 481] categorically held that the date of default is not the date of classification of the account as NPA. The Court observed:

*“However, Section 7 comes into play when the corporate debtor commits ‘default’. Section 7 consciously uses the expression ‘default’—not the date of notifying the loan account of the corporate person as NPA. Further, the expression ‘default’ has been defined in Section 3(12) to mean non-payment of ‘debt’ when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.”*

e) Further, Section 3(12) of the Code defines "default" as a non-payment of debt when it has become due and payable. The



provisions of the Code clearly stipulate that a default occurs due to non-payment of debt when it becomes due—not when an account is classified as NPA.

f) Even the Reserve Bank of India’s Master Circular No. DBOD.No.BP.BC.1/21.04.048/2013-14 dated July 1, 2013, titled “Prudential Norms on Income Recognition, Asset Classification, and Provisioning Pertaining to Advances” (Annexure R-1, VOL - 1 of the Reply @ Pg No. 59 to 196), defines ‘NPA’ as an asset that ceases to generate income for the bank. Nowhere does it suggest that classification of an account as NPA can be equated with a ‘default’ under the IBC.

g) Following the dictum of the Supreme Court in *Laxmi Pat Surana* (Supra), the Hon’ble NCLAT in ‘Ramdas Dutta v. IDBI Bank Ltd.’ [Company Appeal (AT) (Ins) No. 1285 of 2022] and ‘Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd.’ 2022 SCC OnLine NCLAT 1622 reiterated that the date of default cannot be equated with the date of NPA classification.

h) Most recently, taking note of these precedents, the Hon’ble NCLT, Principal Bench, New Delhi in ‘State Bank of India v. Raebareilly Allahabad Highway Private Limited’ [2024 SCC OnLine NCLT 628], categorically held that the right to apply under the IBC accrues only upon a default, which is three months prior to the Date of NPA. The relevant portion is as follows:

*“Taking note of the decision in Edelweiss Asset Reconstruction Co. Ltd. v. Perfect Engine Components (P) Ltd., 2022 SCC OnLine NCLAT 1622, we are of the view, that ordinarily the Date of NPA can be considered as Date of Default but the right*



*to apply under the Code accrues once there is a default (which is three months prior to Date of NPA).”*

c. **Implication of Section 10A of the Code**

a) The date of NPA i.e., 09.05.2021, cannot be construed as the date of default for invoking jurisdiction under Section 7 of the Code.

b) Since the right to apply under the Code arises upon default—i.e., 90 days prior to the date of NPA (09.02.2021)—the alleged default squarely falls within the protective ambit of Section 10A of the Code.

c) Section 10A imposes a bar on insolvency proceedings for defaults occurring during the specified period introduced to mitigate the financial distress caused by the COVID-19 pandemic. Consequently, the present proceedings are barred by law and liable to be dismissed in limine.

d) This is further supported by the Hon’ble Supreme Court’s judgment in *M. Suresh Kumar Reddy v. Canara Bank* [(2023) 8 SCC 387], where it was held:

*“If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.”*

d. **Findings of the Debt Recovery Tribunal (DRT) on NPA Classification**

a) During the pendency of these proceedings, the CD filed Securitization Application No. 628 of 2023 (‘New Tech Imports P. Ltd. & Ors. v. Encore Asset Reconstruction Company Pvt. Ltd. & Anr.’) before the Hon’ble Debt Recovery Tribunal (DRT), New Delhi.



b) Vide judgment dated 16.11.2024, the Ld. DRT categorically held that the classification of the CD's account as NPA on 09.05.2021 was illegal and contrary to the RBI guidelines.

c) The DRT observed that:

- The date of NPA classification was inconsistent with the Bank's own communications;
- The Bank failed to comply with RBI guidelines while classifying the account as NPA.

d) Since the NPA classification itself has been declared illegal, no valid cause of action survives for the FC to maintain the present proceedings under Section 7 of the Code.

e) The judgment of the DRT effectively extinguishes the foundation for invoking the jurisdiction of this Ld. AA under Section 7 of the Code. Accordingly, the accompanying application is liable to be dismissed in its entirety.

### **Findings & Analysis:**

7. We have heard the learned Counsels appearing for Applicant and Corporate Debtor and perused the documents on records. We find that:

7.1 The first issue that arises for consideration is **whether the classification of the account of the Corporate Debtor as a Non-Performing Asset (NPA) can be considered as 'default' for the purpose of proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC)**. It is a well-settled principle of law that the mere classification of an account as NPA does not ipso facto translate into a 'default' under Section 7 of the Code. The determination of default under IBC must be based on an independent assessment



of non-payment of a financial debt, rather than solely relying on the categorization of the account as NPA.

- 7.2 The Hon'ble National Company Law Appellate Tribunal (NCLAT), in **Edelweiss Asset Reconstruction Company Limited v. Perfect Engine Components Private Limited, 2022** SCC OnLine NCLAT 1622, has categorically held that:

*"While the date of NPA classification is ordinarily considered as the date of default, such classification by itself does not amount to a conclusive determination of default. The adjudication under the IBC must be based on a clear establishment of non-payment of a financial debt, rather than the mere classification of the account."*

- 7.3 A similar position has been reiterated by the Hon'ble NCLAT in Jagdish Prasad Sarada v. Allahabad Bank, Company Appeal (AT) (INS) No. 183 of 2020, wherein it was observed that:

*"The date of default would be the date of declaration of NPA, and such a date would not shift, thereby confirming that NPA classification is only a reference point and not an independent ground for initiating insolvency."*

- 7.4 Further, the Hon'ble Supreme Court, in Babulal Vardharji Gurjar v. Veer Gurgar Aluminium Industries (P) Ltd., (2020) 15 SCC 1, has enunciated the legal position in clear terms, holding that:

*"The date of default must be ascertained independently and cannot be determined solely on the basis of NPA classification."*



7.5 In view of the above judicial precedents, it is evident that while the classification of an account as NPA may be indicative of financial distress, it does not amount to conclusive proof of default. The IBC mandates that the existence of a financial debt and its non-payment must be independently established by the Financial Creditor. In the present case, the Financial Creditor has adduced sufficient documentary evidence, including loan agreements, bank statements, and demand notices, to establish the existence of a financial debt and its non-payment.

7.6 The next question that arises for consideration is **whether a partial default in the payment of a financial debt is sufficient to trigger insolvency proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC)**. The determination of this issue is crucial, as Corporate Debtors often contend that insolvency proceedings cannot be initiated if they have made partial payments towards the debt.

7.7 The Hon'ble Supreme Court, in *M. Suresh Kumar Reddy v. Canara Bank*, (2023) 8 SCC 387, has settled this issue unequivocally. The Court held that:

*"Even non-payment of a part of the debt constitutes a 'default' within the meaning of the IBC. Once the Adjudicating Authority is satisfied that a default has occurred, there is little discretion left with it to refuse admission of a petition under Section 7."*

7.8 This pronouncement makes it abundantly clear that a default need not be in respect of the entire outstanding debt. Even a default in



payment of a portion of the financial debt is sufficient to invoke the jurisdiction of the Adjudicating Authority under Section 7 of the IBC. The law does not require the Financial Creditor to establish that the entire debt remains unpaid—even a single instance of default triggers the creditor’s right to seek initiation of CIRP.

7.9 In light of the settled legal position, it follows that the Financial Creditor is entitled to initiate CIRP even if the Corporate Debtor has partially repaid the loan but remains in default for the remaining amount. The present application, therefore, cannot be dismissed merely on the ground that the Corporate Debtor has made some payments—what matters is whether a default has occurred, regardless of its quantum.

7.10 The next question that arises for consideration is **whether an order passed by the Hon’ble Debt Recovery Tribunal (DRT) in SA No. 628 of 2023, dated 16.11.2024, setting aside the classification of the account as a Non-Performing Asset (NPA), has any bearing on the present insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC)**. It is imperative to examine whether such an order affects the determination of ‘default’ under Section 7 of the IBC and whether it precludes the initiation of the Corporate Insolvency Resolution Process (CIRP).

7.11 The answer to this question is found in Section 238 of the IBC, which provides that:



*"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

7.12 This provision underscores the overriding effect of the IBC over all other laws, including the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), under which the DRT exercises jurisdiction. The legislative intent behind Section 238 is to ensure that insolvency adjudication remains independent of parallel statutory proceedings, including those before the DRT.

7.13 The Hon'ble National Company Law Appellate Tribunal (NCLAT), in the case of Shri M.K. Dhir & Ors. v. Punjab National Bank & Anr., Company Appeal (AT) (INS) No. 453 of 2021, has categorically held that:

*"The DRT has only adjudicated upon the procedural lapses in NPA classification under SARFAESI. It has not ruled upon the existence of financial debt or default, which are the primary considerations under the IBC."*

7.14 This ruling makes it abundantly clear that an order of the DRT setting aside NPA classification does not negate the existence of financial debt or the occurrence of default, which are the two primary factors for admitting a Section 7 petition under the IBC. The DRT's jurisdiction is limited to determining whether the lender followed the correct procedure under SARFAESI, and it does not



extend to making findings on default under IBC, which is the sole domain of the Adjudicating Authority (NCLT).

7.15 In light of the statutory framework under Section 238 of the IBC and the authoritative pronouncements of the Hon'ble NCLAT, it is evident that the order of the DRT does not have any bearing on the present proceedings. The determinative factor under IBC is 'default' and not the validity of NPA classification under SARFAESI. Accordingly, the present application remains fully maintainable and cannot be dismissed on the basis of the DRT's ruling.

*Essentials of Admitting a Section 7 Petition Under IBC:*

7.16 In order to admit an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), the Hon'ble Adjudicating Authority must be satisfied that the statutory requirements for initiating the Corporate Insolvency Resolution Process (CIRP) are duly met. The first and foremost requirement is the existence of a financial debt as defined under Section 5(8) of the IBC. A financial debt refers to a debt that is disbursed against the consideration for the time value of money, which includes loans, bonds, debentures, or any other financial instruments specified under the provision. The applicant must establish that the Corporate Debtor had availed such financial debt and that the liability to repay the same has arisen.

7.17 The second essential requirement is the default in repayment of the financial debt by the Corporate Debtor. Section 3(12) of the IBC defines "default" as the non-payment of the whole or any part of a



debt which has become due and payable. It is not necessary that the entire debt remains unpaid; even a partial default constitutes grounds for the initiation of CIRP.

7.18 The third essential requirement is that the application under Section 7 of the IBC must be filed by a Financial Creditor in accordance with the prescribed procedure. The application must be complete in all respects, accompanied by the necessary documents, and should not be barred by any statutory provision, including Section 10A of the IBC or any limitation law. Once the Adjudicating Authority is satisfied that a default has occurred, it has little discretion to reject the application, unless it is found to be incomplete or barred under any other law. Thus, once the existence of financial debt, the occurrence of default, and the procedural compliance of the application are established, the admission of the petition under Section 7 of the IBC becomes imperative.

7.19 Applying the principles enunciated above to the facts of the present case, it is evident that all the essential requirements for admitting a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), are duly satisfied. The first requirement, the existence of a financial debt, is clearly established through the loan agreements, bank statements, and other supporting documents submitted by the Financial Creditor. These records unequivocally demonstrate that a financial debt was extended to the Corporate Debtor, thereby satisfying the threshold under Section 5(8) of the IBC. There is no dispute regarding the existence of such debt, nor



has the Corporate Debtor been able to refute the financial liability arising from the same.

7.20 The second essential requirement, the occurrence of default in repayment of the financial debt, is also satisfied in the present case. The Financial Creditor has placed on record conclusive evidence, including account statements and correspondence, to establish that the Corporate Debtor has failed to discharge its debt obligations. It is an admitted position that the Applicant Bank had granted time to the Corporate Debtor up to 05.05.2021 for repayment of the outstanding dues. However, despite the said indulgence, the Corporate Debtor failed and neglected to discharge its liability within the stipulated period. The date of default falls outside the protective period under Section 10A of the IBC, which temporarily barred insolvency proceedings for defaults occurring between 25.03.2020 and 24.03.2021. Consequently, the default is neither covered by the statutory exemption nor does it suffer from any legal impediment that could bar the maintainability of the present application.

7.21 The third essential condition, compliance with procedural requirements under the IBC, is also fully met. The application has been filed by a Financial Creditor in accordance with Section 7 of the IBC and is supported by all requisite documents. Furthermore, there exists no statutory bar preventing the admission of this petition. In view of the uncontroverted existence of a financial debt, the clear occurrence of default, and due compliance with procedural mandates, the present application is fit for admission



under Section 7 of the IBC, and the initiation of Corporate Insolvency Resolution Process (CIRP) is warranted.

8. In light of the above facts and circumstances, it is ordered as follows:

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8.1 The Application bearing IB-823(ND)/2022 filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Corporate Debtor is **admitted**.

8.2 We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Adjudicating Authority, arbitration panel or other authority;*

*(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

*(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other*



*authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

8.3 It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.

8.4 The Applicant has proposed the name of **Mr. Rishabh Chand Lodha** as the Interim Resolution Professional (“IRP”) having address: **E-5, Basant Vihar, Bhilwara, Rajasthan, 311001**. His Email id is **rishabhlodha57@gmail.com**. His registration number is **IBBI/IPA-001/IP-P01075/2017-2018/11766**. The Applicant has filed a copy of the consent issued by **Mr. Rishabh Chand Lodha** in Form 2 and Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules (*Attached to the Petition, Volume – II, as ‘Annexure A – 39*) along with the Certificate of Registration and Authorization for Assignment in Form B. Accordingly, **Mr. Rishabh Chand Lodha** is appointed as IRP.

8.5 In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of



this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- 8.6 During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- 8.7 The IRP shall perform all his functions as contemplated, interalia, by Sections 17, 18, 20 & 21 of the Code. He is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- 8.8 The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- 8.9 The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall



be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.

8.10 In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by email, at the earliest.

8.11 The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

8.12 The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

8.13 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, the present petition bearing CP No. **IB 823 (ND)/2022** is **admitted**. No order as to cost.

**-sd-**

**(DR. SANJEEV RANJAN)**

MEMBER (TECHNICAL)

**-sd-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-IV**

**Company Petition No.: IB 823(ND)/2022**

**IA – 1547/ND/2025**

**IN THE MATTER OF:**

**M/s ENCORE ASSET RECONSTRUCTION COMPANY PRIVATE  
LIMITED**

**...Financial Creditor / Applicant**

**VERSUS**

**M/s NEW TECH IMPORTS PRIVATE LIMITED**

**...Corporate Debtor / Respondent**

**AND**

**IN THE MATTER OF IA – 1547/ND/2025:**

*Under Rule 11 of NCLT Rules, 2016*

**M/s NEW TECH IMPORTS PRIVATE LIMITED**

**...Corporate Debtor / Applicant**

**VERSUS**

**M/s ENCORE ASSET RECONSTRUCTION COMPANY PRIVATE  
LIMITED**

**...Financial Creditor / Respondent**

**Pronounced on: 17.04.2025**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE  
MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**



**Present:**

For Financial : -  
Creditor

For Corporate : P. Nagesh, Sr. Adv., Krish Kalra, Adv  
Debtor

**ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. This application has been filed by M/s New Tech Imports Private Limited ("**Applicant / Corporate Debtor**") against M/s Encore Asset Reconstruction Company Private Limited ("**Respondent**" / "**Financial Creditor**") under rule 11 of NCLT Rules, 2016. The prayer of the applicant is as extracted below:

*“(a) Allow the present Application and allow the Applicant/Corporate Debtor to bring on record the additional documents annexed to the present Application as ANNEXURE Z/ 1 to ANNEXURE Z/ 6 (Colly); and/or  
(b) Pass any orders in favor of the Respondent / Corporate Debtor as the Ld. AA Tribunal may deem fit in the interest of justice.”*

2. The Learned Counsel appearing on behalf of the Corporate Debtor submits that the orders dated 13.01.2025, 31.01.2025, and 27.02.2025 passed by the Hon’ble Debt Recovery Appellate Tribunal (DRAT), New Delhi in Appeal No. 04/2025 are of material relevance to the ongoing insolvency proceedings in Company Petition No. IB 823/ND/2022 pending adjudication before this Bench.



3. Upon a careful examination of the documents annexed with the present Application, it is evident that the same pertain to proceedings in Appeal No. 04/2025 before the Hon'ble DRAT, New Delhi. The Corporate Debtor contends that the issues and determinations arising therefrom bear a nexus with the matters under consideration in the instant insolvency proceedings, thereby necessitating their inclusion in the record.
  
4. While the Corporate Debtor seeks to establish the relevance of such documents, this Bench is constrained to observe that proceedings before the Hon'ble DRAT, particularly those arising under the SARFAESI Act, 2002, do not have a determinative bearing on the issues under consideration in a petition filed under the Insolvency and Bankruptcy Code, 2016. The IBC, being a self-contained code, operates independently and is imbued with an overriding effect over any inconsistent legal provisions by virtue of Section 238 thereof, which provides as follows:  

*“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”*
  
5. Further, this Bench, while Adjudicating the matter in IA 5871/ND/2024 has already taken into consideration the orders passed by Ld. DRT – 1, New Delhi and this Bench finds that these orders do not have a bearing on the present case pending adjudication before this Bench being CP IB 823(ND)/2022.
  
6. Further, the Applicant has placed reliance upon the judgment



dated 04.04.2025 rendered by the Ld. National Company Law Tribunal, Mumbai Bench, in the matter of *Credible Engineering Construction Projects Limited versus Patel Engineering Limited*, in IA (I.B.C) No. 2460/MB/2024 in CP (IB) No. 697/MB/2021. The Applicant seeks to draw support from the following paragraph of the said decision:

*“4.4 Further, there is no bar in law even to the amendment of pleadings in an application under the IBC. The Hon’ble Supreme Court’s decision in Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr., [Civil Appeal No. 1650 of 2020], has been reiterated in its recent judgment in State Bank of India Assistant Manager Vs. India Power Corporation Limited., [Civil Appeal No. 8178 of 2023] that in the absence of any express provision which prohibits or sets a time-line for filing of additional documents, there is no bar to the filing of documents over and above those documents. The reasoning provided by Hon’ble Supreme Court in Dena Bank (supra) is also applicable to the Main Application filed under Section 9 of the IBC. The law on allowing amendment of pleadings or producing additional documents was also settled by Hon’ble Supreme Court in B.K. Narayana Pillai Vs. Pararneswaran Pillai & Anr., [(2000) 1 SCC 712], wherein it was held that the amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation and technicalities of law should not be permitted to hamper the Courts in the administration of justice. All amendments of*



*the pleadings should be allowed, which are necessary for determination of the real controversies. In the present IA, the Applicant/OC is not even asking for any amendment in the Main Application but only praying for furnishing of certain additional documentary evidence, which it thinks would substantiate its claim before the Tribunal. Further, the proposed additional documents do not alter the case of the Applicant/OC or substitute its cause of action with a new cause of action. The Hon'ble NCLAT, Chennai, in M/s. Raj Television Network Limited Vs. M/s. Thaicom Public Company Limited., [Company Appeal (AT) (CH) (Ins) No. 325/2023 & IA No. 991/2023] also held that all amendments ought to be allowed if the twin conditions are satisfied (i) of not working injustice to other side; (ii) of being necessary, for the purpose of determining the real questions in controversy between the parties. We, therefore, hold that a party should not be refused permission to submit additional documents, merely because of some negligence or inadvertence. In the present IA, it is seen that there was no specific time limit on the Applicant to produce any document before this Tribunal. In view of the above, we hold that no harm or injustice would be caused to the Respondent/CD if the Applicant/OC is allowed to submit additional documents. Hence, the additional documents can safely be taken on record.”*

7. This Bench has given due consideration to the judgment cited by the Applicant. However, it is necessary to delineate that the



factual matrix and procedural posture of the present case differ materially from the circumstances obtaining in the matter relied upon by the Corporate Debtor. In the present proceedings, orders were already reserved by this Bench on 03.01.2025 after the conclusion of pleadings and final arguments. Consequently, the stage for placing on record any further materials or additional documents stood concluded upon reservation of the matter for pronouncement of order.

8. On the other hand, in the matter of *Credible Engineering Construction Projects Limited* (supra), the proceedings were at a nascent stage where pleadings had not yet closed, and no order had been reserved. The permissibility of filing additional documents during the pendency of pleadings is distinguishable from attempts made to introduce documents post-reservation of orders, which if permitted, would effectively amount to re-opening the matter and defeating the finality attached to the stage of reserving orders. Thus, the ratio laid down in the cited case is inapplicable to the facts of the present matter and does not lend support to the Applicant's prayer for introducing additional documentation at this belated juncture.
  
9. We also rely upon the judgment rendered by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in **Loramitra Rath vs. JM Financial Asset Reconstruction Company Ltd.**, CA(AT)(Insolvency) Nos. 1359 & 1360 of 2023, wherein the Hon'ble Appellate Tribunal reiterated the well-established legal position that the act of reserving judgment and the



pronouncement thereof are part of a continuous process, forming a single procedural continuum without any interregnum.

10. In light of this principle, it has been judicially affirmed that pleadings or applications filed subsequent to the stage of reserving judgment—particularly by way of an interlocutory application—are ordinarily not entertained, owing to considerations of procedural propriety. The relevant paragraph of the said judgment is extracted below for ready reference:

*“13. It is a well settled proposition of law that the two stages of reserving of judgment and pronouncement of judgment are in a continuum with no hiatus or gap as such in the two stages. That being the well accepted and time-tested practice in court proceedings, subsequent pleadings filed by way of an I.A. after the judgement is reserved is normally not entertained for reasons of procedural propriety. The Adjudicating Authority while dismissing the I.A. has applied the same settled position of law that when a matter is reserved for orders, there is no scope for entertaining application from parties to re-hear the matter. The Adjudicating Authority has relied on the judgment of the Hon’ble Supreme Court in Arjun Singh v. Mohindra Kumar & Ors. 1964 5 SCR 946 and Hon’ble Rajasthan High Court in Rajasthan Financial Corporation v. Pukhraj Jain & Ors. in AIR 2001 Raj 71 to hold that no application could be moved after the final arguments were heard and the case was closed for judgment. Hence, we find that the Adjudicating*



*Authority had committed no error in not entertaining the I.A. particularly so when the I.A. contained facts which were already in existence at the time of filing of reply and at the time of making pleadings in the main company petition. Neither do we find any cogent grounds having been cited to explain what had impeded the Appellant from flagging these issues during the hearing of the main company petition. It also does not stand to any logical reasoning as to why the issues raised in the I.A. could not have been raised in the main company petition. Raising such technical issues and that too after detailed hearing in the main petition was concluded clearly shows that the Appellant was merely trying to raise feeble grounds in the I.A. to somehow delay and derail the admission of CIRP. Hence in our considered opinion, the Adjudicating Authority had rightly rejected the I.A. 253/2023.”*

11. In view of the foregoing discussion and the settled position of law as enunciated by the Hon'ble NCLAT, this Bench finds no merit in entertaining the present application filed by the Corporate Debtor at this belated stage, after the matter has already been reserved for orders. The documents sought to be placed on record pertain to proceedings under a distinct statutory framework and are neither essential nor determinative for the adjudication of the insolvency petition under the IBC. Entertaining such applications post-reservation would compromise the procedural discipline and sanctity of judicial proceedings.



Accordingly, **IA - 1547/ND/2025** in CP IB 823/ND/2022 stands **dismissed** as being devoid of merit.

**-sd-**

**-sd-**

**(DR. SANJEEV RANJAN)**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-IV**

**Company Petition No.: IB 823(ND)/2022**

**IA – 5871/ND/2024,  
IA – 5440/ND/2024,  
IA – 4495/ND/2024,  
IA – 3244/ND/2024,  
IA - 4483/ND/2024**

**IN THE MATTER OF:**

**M/s ENCORE ASSET RECONSTRUCTION COMPANY PRIVATE  
LIMITED**

**...Financial Creditor / Applicant**

**VERSUS**

**M/s NEW TECH IMPORTS PRIVATE LIMITED**

**...Corporate Debtor / Respondent**

**AND**

**IN THE MATTERS OF IA – 5871/ND/2024, IA – 5440/ND/2024, IA –  
4495/ND/2024, IA – 3244/ND/2024, IA 4483/ND/2024:**

*Under Rule 11 of NCLT Rules, 2016*

**M/s NEW TECH IMPORTS PRIVATE LIMITED**

**...Corporate Debtor / Applicant**

**VERSUS**

**M/s ENCORE ASSET RECONSTRUCTION COMPANY PRIVATE  
LIMITED**

**...Financial Creditor / Respondent**

**Pronounced on: 17.04.2025**



**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE  
MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For Financial Creditor : Mr. Sudhir Makkar, Senior Advocate, Ms. Sanya Lamba, Adv.

For Corporate Debtor : Mr. Anuj Mirdha, Mr. Krish Kalra, Ms. Rashmi Arora, Adv.

**ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

**I. IA – 5871/ND/2024:**

1. This application has been filed by M/s New Tech Imports Private Limited ("**Applicant / Corporate Debtor**") against M/s Encore Asset Reconstruction Company Private Limited ("**Respondent**")/ "**Financial Creditor**") under rule 11 of NCLT Rules, 2016. The prayer of the applicant is as extracted below:

*“(a) Allow the present Application and allow the Applicant/Corporate Debtor to bring on record its additional affidavit along with the judgement dated 16.11.2024 passed by the Ld. DRT – 1, New Delhi in S.A. No. 628 of 2023 annexed to the present Application as ANNEXURE ZZ/ 1; and/or*

*(b) Pass any orders in favor of the Applicant/Corporate Debtor as Ld. AA may deem fit in the interest of justice.”*



2. The Ld. Counsel for Corporate Debtor contends that the judgment dated 16.11.2024, passed by the Learned DRT – 1, New Delhi, in S.A. No. 628 of 2023 has a bearing on the main insolvency proceedings pending before this Bench in Company Petition IB 823/ND/2022.
  
3. In the interest of justice and to ensure that all relevant materials are available before this Bench while adjudicating the main petition, the prayer of the Applicant is allowed. The document annexed as ANNEXURE ZZ/1, being the judgment dated 16.11.2024, shall be taken on record and shall be considered by this Bench while adjudicating upon CP IB 823/ND/2022. However, it is made clear that the mere admission of this document does not, in any manner, prejudice the merits of the main petition.

Accordingly, **IA – 5871/ND/2024** stands **allowed**.

## **II. IA – 5440/ND/2024:**

1. This application has been filed by M/s New Tech Imports Private Limited ("**Applicant / Corporate Debtor**") against M/s Encore Asset Reconstruction Company Private Limited ("**Respondent**" / "**Financial Creditor**") under rule 11 of NCLT Rules, 2016 seeking permission to place on record an additional document in the ongoing insolvency proceedings. The prayer of the applicant is as extracted below:



*“(a) Allow the present Application and allow the Respondent /Corporate Debtor to bring on record the additional document annexed to the present Application as ANNEXURE X/ 1; and/or*

*(b) Pass any orders in favor of the Applicant/ Corporate Debtor as Ld. AA may deem fit in the interest of justice.”*

2. The Learned Counsel for the Corporate Debtor submits that the Copy of Notice dated 05.07.2023, issued by the Respondent / Financial Creditor under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, is a material document that has a direct bearing on the issues under consideration in Company Petition IB 823/ND/2022, presently pending before this Bench. The said document, according to the Applicant, is relevant for a just and proper adjudication of the matter.
3. Having considered the submissions advanced and taking into account the principles of natural justice, this Tribunal is of the considered view that all relevant materials should be before this Bench while adjudicating the main petition. In view of the same, the prayer of the Applicant is allowed, and the additional document annexed as ANNEXURE X/ 1 is taken on record.
4. However, it is made clear that the mere admission of this document does not, in any manner, prejudice the merits of the main petition.



Accordingly, **IA – 5440/ND/2024** stands **allowed**.

**III. IA – 4495/ND/2024:**

1. This application has been filed by M/s New Tech Imports Private Limited ("**Applicant / Corporate Debtor**") against M/s Encore Asset Reconstruction Company Private Limited ("**Respondent**"/ "**Financial Creditor**") under rule 11 of NCLT Rules, 2016. The Applicant seeks a direction upon the Financial Creditor to amend the Company Petition in accordance with the order dated 09.01.2024, failing which, the Applicant prays for the dismissal of the pending proceedings.
2. The prayer of the applicant is as extracted below:

*“(a) Allow the present Application and direct Encore Assets Reconstructions P. Ltd. to amend the Company Petition in terms of the order dated 09.01.2024 and file the amended Company Petition duly verified by an affidavit of Encore Assets Reconstructions P. Ltd. within Seven (7) days failing which the present proceedings be dismissed by this Ld. AA; or*

*(b) Pass any orders in favor of the Applicant/Corporate Debtor as Ld. AA may deem fit in the interest of justice.”*

3. The matter was heard , and the Ld. Counsel for the Corporate Debtor argued that the Financial Creditor has failed to amend the Company Petition despite the directions of this Bench in IA No. 5148/ND/2023, which was disposed of vide order dated



09.01.2024.

4. This Bench has carefully examined the order dated 09.01.2024 passed in IA 5148/ND/2023 and finds that the relevant portion of the order reads as follows:

*“Accordingly in view of the discussions as made above and the reasons as shown, the instant application i.e., I.A/5148/ND/2023 stands allowed. The amended memo of the parties placed by the applicant is taken on record.”*

5. From a perusal of the aforesaid order, it is evident that this Bench did not direct the amendment of the Company Petition. Rather, the amended memo of parties, as submitted by the Applicant in IA 5148/ND/2023, was merely taken on record. Thus, there was no direction requiring the Financial Creditor to amend the Company Petition.
6. In light of the above findings, the prayer of the Corporate Debtor seeking an explicit direction to amend the Company Petition is misconceived and devoid of merit. The Financial Creditor cannot be compelled to undertake an amendment when no such direction was issued in the first place. Consequently, the contention that non-compliance with the purported amendment direction should result in the dismissal of the proceedings is also untenable.

Accordingly, **IA – 4495/ND/2024** stands **dismissed**, being devoid of merit.



**IV. IA – 3244/ND/2024:**

1. This application has been filed by M/s New Tech Imports Private Limited ("**Applicant / Corporate Debtor**") against M/s Encore Asset Reconstruction Company Private Limited ("**Respondent**" / "**Financial Creditor**") under rule 11 of NCLT Rules, 2016. Through this application, the Corporate Debtor seeks permission to place on record an additional affidavit along with additional documents in the ongoing insolvency proceedings. The prayer of the applicant is as extracted below:

*“(a) Allow the present Application and allow the Respondent / Corporate Debtor to bring on record the additional affidavit along with additional documents annexed to the present Application as ANNEXURE Z/ 1 to ANNEXURE Z/ 19; and/or*

*(b) Pass any orders in favor of the Applicant/ Corporate Debtor as Ld. AA may deem fit in the interest of justice.”*

2. Upon perusal of the documents on record, it is observed that the documents attached to the present application pertain to Securitization Application No. 628/2023, titled “New Tech Imports Pvt Ltd. & Ors. Vs. Encore ARC & Anr.”, filed before the Learned Debt Recovery Tribunal (DRT-1), New Delhi, on 10.11.2023. The Corporate Debtor contends that the proceedings before the DRT and the accompanying records are relevant for consideration in the ongoing insolvency proceedings before this Tribunal.



3. A detailed examination of the voluminous submissions reveals that the Corporate Debtor has annexed all pleadings and orders passed by the DRT in the aforementioned Securitization Application. The entire application spans six (VI) volumes, consisting of approximately 1,049 pages. The nature of the documents presented includes:

- Pleadings of the Corporate Debtor before the DRT
- Interim orders passed by the DRT
- Submissions of the Financial Creditor before the DRT
- Other connected documents filed during the DRT proceedings

4. While the Corporate Debtor argues that these documents have a bearing on the insolvency proceedings, it must be noted that pleadings before the DRT, including issues relating to SARFAESI Act proceedings, do not have direct relevance in determining the admission or continuation of proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC). The IBC operates independently and has an overriding effect over any other law in force, as explicitly provided under Section 238 of the IBC, which states:

*“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”*

5. The DRT adjudicates disputes concerning the validity of securitization measures and enforcement of security under the SARFAESI Act, whereas proceedings before this Tribunal under



the IBC focus on the existence of a financial debt and default. As repeatedly held by the Hon'ble NCLAT and the Hon'ble Supreme Court, the classification of an account as an NPA or disputes before the DRT cannot override the fundamental criteria for initiating CIRP under Section 7 of the IBC.

6. Given the above, it is evident that the documents sought to be placed on record by the Corporate Debtor do not have any material bearing on the adjudication of the present insolvency proceedings. The pleadings before the DRT, the orders passed therein, or any disputes raised under SARFAESI are not determinative of the existence of 'default' under the IBC, which remains the primary consideration for this Adjudicating Authority.
7. In view of the foregoing, this Bench is of the considered opinion that the present application is devoid of merit. Permitting the inclusion of unrelated voluminous records from DRT proceedings would only delay and complicate the insolvency resolution process, which is contrary to the objective of the IBC.

Accordingly, **IA – 3244/ND/2024** stands **dismissed** as being devoid of merit.

**V. IA – 4483/ND/2024:**

1. This application has been filed by M/s New Tech Imports Private Limited ("**Applicant / Corporate Debtor**") against M/s Encore Asset Reconstruction Company Private Limited ("**Respondent**" / "**Financial Creditor**") under rule 11 of NCLT Rules, 2016. Through this application, the Corporate Debtor seeks permission



to place on record an additional affidavit along with additional documents in the ongoing insolvency proceedings. The prayer of the applicant is as extracted below:

*“(a) Allow the present Application and dismiss the present proceedings in view of the S.A. No. 682 of 2023 titled 'New Tech Imports P. Ltd. v. Encore Asset Reconstruction P. Ltd. & Anr.' pending before the Ld. ORT -1, New Delhi; or*

*(b) In alternative to prayer (a), to keep the accompanying proceedings in abeyance till the final outcome of the proceedings in S.A. No. 682 of 2023 titled 'New Tech Imports P. Ltd. v. Encore Asset Reconstruction P. Ltd. & Anr. 'which is pending before the Ld. ORT - I, New Delhi; or*

*(c) Pass any orders in favor of the Applicant/ Corporate Debtor as Ld. AA may deem fit in the interest of justice.”*

2. The Learned Counsel for the Corporate Debtor contends that the orders passed by the Learned DRT-1, New Delhi, in S.A. No. 682 of 2023, are material to the adjudication of Company Petition IB 823/ND/2022, currently pending before this Bench. The Applicant submits that these documents provide relevant context regarding the financial transactions and the dispute between the parties and should therefore be considered for a just and proper adjudication of the matter.



3. This Bench is of the view that the pendency of proceedings before the DRT does not preclude or bar the initiation or continuation of proceedings under the IBC, as held in multiple judgments by the Hon'ble NCLAT and the Hon'ble Supreme Court.
4. However, in the interest of justice, this Adjudicating Authority deems it appropriate to take the documents on record to ensure that all relevant material is considered while adjudicating the main petition (CP IB 823/ND/2022).

Accordingly, **IA – 4483/ND/2024** stands **disposed of** with directions.

**-sd-**

**-sd-**

**(DR. SANJEEV RANJAN)**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)