

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB)/83 (MB)/2024

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

In the matter of

Bank of India

[U99999MH1906PLC000243]

...Financial Creditor/Applicant

Versus

GF Toll Road Private Limited

[CIN:U74990MH2008PTC189112]

...Corporate Debtor/Respondent

AND

CP (IB)/120 (MB)/2024

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

In the matter of

Indian Bank

[PAN: AAACI1607G]

...Financial Creditor/Applicant

Versus

GF Toll Road Private Limited

[CIN:

U74990MH2008PTC189112]

...Corporate Debtor/Respondent

Order Pronounced on 23.10.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor(BOI) : Mr. Karan G., Advocate;
Mr. Vaibhav Gupta, Chief
Manager, BOI.
For the Financial Creditor (Indian
Bank) : Ms. Anju Bhushan Gupta
a/w Mr. Aditya Goel,
Advocates.
For the Corporate Debtor : Mr. Rohit Gupta a/w Ms.
Raghani Sharma i/b Mulla
and Mulla Co., Advocates.

ORDER

Per: Prabhat Kumar, Member (Technical)

Brief Facts:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Bank of India** ("hereinafter referred to as the Financial Creditor/Applicant/BOI"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **GF Toll Road Private Limited** ("hereinafter referred to as the Corporate Debtor/Respondent/GFTRPL").

2. The Applicant is a body corporate having CIN U99999MH1906PLC000243 incorporated on 07.09.1906 with its registered office at Bank of India, Star house, C-5 G Block, Bandra Kurla Complex, Mumbai 400051, Maharashtra, India.
3. The Respondent is constituted under the Companies Act, 1956 incorporated on 23.12.2008 having Company Identification no. U74990MH2008PTC189112 with its registered office at GF Toll Road Private Limited Reliance Centre, 19, Walchand Hirachand Marg, Ballard Estate Mumbai, Mumbai City, Maharashtra - 400001. Its authorized share capital is Rs. 20,00,00,000/- and Paid up share Capital is Rs. 1,96,11,000/-.
4. The amount claimed to be in default is Rs. 73,08,67,553.64/- (Rupees Seventy Three Crores Eight Lakhs Sixty Seven Thousand Five Hundred Fifty Three And Sixty Four Paise Only) as on 30.09.2023. The Date of default as stated to be in Part IV of the Petition is 30.09.2018.

Submissions of the Applicant (Bank of India):

5. The Financial Creditor sanctioned a Rupee term loan of Rs. 150 Crores (Allocated Rs.100 Crores) to the Corporate Debtor, out of total consortium amount of Rs.584 Crores for the purpose of capital expenditure in respect of upgradation/widening of Gurgaon-Faridabad & Ballabgarh-Sohna road on build, operate and Transfer (BOT) basis in the state of Haryana. That the present financial creditor acted as a lead bank of consortium consisting of 1. Indian Bank (along with erstwhile Allahabad Bank after merger) 2. Axis Bank Ltd. 3. Bank of Baroda 4. Bank of India 5. Union Bank of India (erstwhile - Corporation Bank) 6. State Bank of Patiala 7. UCO Bank 8. Punjab National Bank (erstwhile - United Bank of India).
6. That, the Corporate debtor is a SPV of Reliance Infrastructure Ltd. for the purpose of envisaging, design, engineering, finance, construction, improvement, operation and maintenance and upgrading of the existing road from Km0.000 to 24.310 Km(Approx) of Gurgaon-Faridabad Road, Km 0.000 to 6.100 (Approx) of MCF Road, Km 0.000 to Km 3.100 of

crusher zone road, Km 0.800 to Km 29.376 of Ballabhgarh-Lukhawas junction road, Km 0.000 to Km 4.102 Km of Pali-Bhakri road, total length of road being 66.185 Km in Gurgaon and Faridabad Districts, in the State of Haryana, India on build, operate and transfer basis in accordance with the terms and conditions contained in the concession agreement dt. January 31, 2009 for a period of 17 years upto 30.05.2026.

7. That, the corporate debtor was sanctioned a total loan of Rs.584 Crores by all the consortium out of which the share of the present financial creditor was Rs.100 Crores on the terms and conditions contained in the common loan agreement dt 26th August 2009 entered between the borrowers and the lenders.
8. That as per the Sanction Letter dt.22.08.2009 bearing reference no. NDLCB/SKB/0206, the total facility amount required was 584 crores out of which the required share of the financial creditor was 150 crores and allocated amount was Rs. 100 Crores. The said Letter provided for a door to door tenure of 12 years from the date of first disbursement-(including a construction period of 23 months and post-completion moratorium of 10 months). The repayment was scheduled to be in 38 unequal quarterly installments commencing from 31st March 2012 as under:-

Repayment Dates	% of Total Principal Repayment	Repayment Dates	% of Total Principal Repayment
31-Mar-12	1.00%	30-Dec-16	2.13%
30-Jun-12	0.50%	30-Mar-17	2.13%
30-Sep-12	0.50%	30-Jun-17	3.00%
30-Dec-12	0.50%	30-Sep-17	3.00%
30-Mar-13	0.50%	30-Dec-17	3.00%
30-Jun-13	0.63%	30-Mar-18	3.00%
30-Sep-13	0.63%	30-Jun-18	3.75%
30-Dec-13	0.63%	30-Sep-18	3.75%

30-Mar-14	0.63%	30-Dec-18	3.75%
30-Jun-14	1.25%	30-Mar-19	3.75%
30-Sep-14	1.25%	30-Jun-19	4.50%
30-Dec-14	1.25%	30-Sep-19	4.50%
30-Mar-15	1.25%	30-Dec-19	4.50%
30-Jun-15	1.25%	30-Mar-20	4.50%
30-Sep-15	1.25%	30-Jun-20	6.00%
30-Dec-15	1.25%	30-Sep-20	6.00%
30-Mar-16	1.25%	30-Dec-20	6.00%
30-Jun-16	2.13%	30-Mar-21	6.00%
30-Sep-16	2.13%	30-Jun-21	7.00%

9. That the spread was to be computed as BPLR minus applicable interest rate and was to be reset on scheduled commercial operations date and every year thereafter and the applicable interest rate was 11.50% p.a payable monthly linked to Lead bank's BPLR.
10. That, a modification in terms of sanction dt.30.09.2009 was issued modifying certain terms of the sanction dt. 22.08.2009.
11. That the said credit facilities were secured by:-
 - a. A first charge/assignment of all revenues and receivables of the borrower from the project.
 - b. First charge on borrower's all bank accounts including, without limitation, the Escrow account to be established by the borrower and each of the other accounts required to be created by borrower under any project document or contract (after allowing for the statutory payments and routine O&M Charges)
 - c. A first charge on all the movable and immovable assets, if any, of the company (except Project Assets)
 - d. A first charge on all intangible assets (other than project assets) including but not limited to the goodwill, undertaking, uncalled capital, and intellectual property rights of the project company.

- e. Assignment/Agreement to assign in favour of lenders, all the rights, titles, and interests of the borrower from all contracts, insurances, licenses in, to, and under all assets of the Project and all project documents (including the concession agreement), which the borrower is party to including contractor relating to the project;
- f. Negative lien on shares representing 51% of the issued and paid up equity share capital of the borrower, to be converted into pledge, in case of default. Proportion of equity shares on which the negative lien shall persist for the duration of debt, shall be reduced to 26% of the issued and paid up share capital of the Project Company upon repayment of 75% of envisaged term debt, subject to there being no outstanding event of default.
12. The said security would rank as pari passu amongst the lenders for the project and the said security was to be created upfront before disbursement. The undertaking for Non-disposal of shareholding was duly executed on behalf of Reliance Infrastructure Limited.
13. An inter creditors agreement dt. 26.08.2009 was executed among the lenders, the present financial creditor (lender's agent), and the security trustee wherein as per the schedule I the total amount of loan disbursed by all the lenders is 584 Crores out of which the present financial creditor's share is 100 Crores.
14. Further, a deed of hypothecation dt. 26.08.2009 was executed in favour of Axis Trustee Services Limited for the benefit of the lenders wherein the hypothecated assets included the whole of the borrower's movables including plant, machinery, equipment, machinery spares, tools, accessories, vehicles, both present and future, save and except the Project Assets; whether installed or not and whether now lying loose or in cases or which are now lying or be stored at any place whatsoever or be held by any party to the order or disposition of the borrower or in the course of transit or in high seas or on order or delivery, howsoever and whosoever in the possession of the borrower and either by way of substitution or addition and the borrower's other assets, book debts, outstanding moneys, receivables,

accounts including escrow account, claims including insurance claims and revenues of whatsoever nature and wherever arising including but not limited to out of the project, and over all cash, cash equivalent and other funds including deposits in all bank accounts of the borrower.

15. On 27.11.2009, a Substitution agreement was executed between Haryana Public Works Department, GF Toll Road Private limited and Bank of India. On 14.12.2009, the consent and agreement terms were executed among GF Toll Road Private Limited, Reliance Infrastructure limited and Axis Trustee Services Limited. Further on, 05.06.2012, 17.04.2015 and 02.02.2017, the Corporate Debtor vide revival letter executed an Acknowledgement of debt in favour of the Financial Creditor. The Corporate Debtor failed to maintain the financial discipline and the financial creditor was constrained to classify the account of the corporate debtor as NPA on 30.09.2018. On 13.11.2019 & 28.07.2022, the Corporate Debtor vide revival letter executed an Acknowledgement of debt in favour of the Financial Creditor.
16. Since the debt remained unpaid, on 17.06.2023, a notice demanding the amount in default was sent to the Corporate Debtor.

CP (IB) 120 of 2024 filed by Indian Bank :

17. The Applicant incorporated under the Banking Companies (Acquisition and Transfer Undertaking) Act of 1970 bearing PAN no. AAACI1607G having its Head Office at 66, Rajaji Salai, Chennai-600001 and Corporate Office at 254-260, Avvai Shanmugam Salai, Royapettah, Chennai-600014.
18. That the Allahabad Bank (member of the consortium) stands merged with the Indian Bank pursuant to the Notification No. 133 Part II, Section 3, Sub-Section (i) and Order No. G.S.R.156 (A) dated 04.03.2020 of the Government of India under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 with effect from 01.04.2020. As such, the debt extended by Allahabad Bank amounting to Rs. 28 Crores at the time of formation of Consortium stands transferred in the name of Indian Bank. That the collective debt stands at Rs. 78 Crores

extended by the Indian Bank (including debt of Allahabad Bank) at the time of entering into Common Loan Agreement dated 26.08.2009. Hence, Allahabad Bank, be read as Indian Bank.

19. On the request of the Respondent, the Applicant sanctioned a loan of Rs. 50 Crores to the Corporate Debtor vide Sanction Letter dated 22.08.2009. Allahabad Bank (since merged with Indian Bank) sanctioned a loan of Rs. 28 Crores to the Corporate Debtor vide Sanction Letter dated 17.08.2009, which was renewed vide Sanction Letters dated 29.03.2011 & 07.11.2012. Thus, the Applicant sanctioned a loan aggregating to Rs. 78 Crores forming part of Consortium Lenders.
20. That in order to part finance the said project, the Corporate Debtor approached the Consortium bankers/Lenders through the lead bank i.e., Bank of India, for financial assistance and it was agreed to make available the Corporate Debtor loans of an aggregate principal amount debt not exceeding Rs. 584,00,00,000/- (Rupees Five Hundred and Eighty-Four Crores only) on the terms and conditions contained in the Common Loan Agreement dated 26.08.2009.
21. That as aforesaid the Loan facility was covered under consortium arrangement and joint consortium documents were executed by the Corporate Debtor in favour of the Applicant (including Allahabad Bank, since merged with Indian Bank) & other Lenders forming part of Consortium. The consortium lenders are as follows -

S. No.	Name of Lender	Amount of Loan (Rupees in Crores)
1.	Indian Bank	50.00
2.	Allahabad Bank (since merged with Indian Bank)	28.00

3.	Bank of India (Lead Bank)	100.00
4.	State Bank of Patiala (now State Bank of India)	25.00
5.	Axis Bank	42.00
6.	Bank of Baroda	65.00
7.	Corporation Bank (since merged with Union Bank of India)	72.00
8.	Union Bank of India	72.00
9.	UCO Bank	95.00
10.	United Bank of India (since merged with Punjab National Bank of India)	35.00
	TOTAL	584.00

22. That pursuant to the terms and conditions in Common Loan Agreement dated 26.08.2009 and at the request of Corporate Debtor, the Applicant Bank alongwith other Consortium Lenders appointed Axis Trustee Services Limited ("ATSL") as Security Trustee vide Security Trustee Agreement dated 26.08.2009. The Security Trustee i.e., ATSL was to hold the Security Interest created pursuant to the Security Documents for the benefit of the secured parties i.e., Indian Bank and other Consortium Lenders.
23. That in pursuance to the Common Loan Agreement dated 26.08.2009 and Security Trustee Agreement dated 26.08.2009, Defendant No. 1 entered into Deed of Hypothecation dated 26.08.2009 in favour of ATSL for the benefit of Consortium Lenders.

24. That the following documents were also executed in relation to the Senior Debt-
- a) Undertaking dated 26.08.2009.
 - b) Undertaking for Non-Disposal of Shareholding of RIL in Corporate Debtor dated 26.08.2009 & Board Resolution of RIL dated 19.08.2009 confirming the same.
 - c) Memorandum operating Procedure dated 26.08.2009.
 - d) EPC Agreement between Corporate Debtor & RIL, dated 23.07.2009.
25. In accordance with the terms of Concession Agreement and the Financing Documents, Corporate Debtor was required to establish Escrow Account on terms and conditions satisfactory to Senior Lenders. That Corporate Debtor entered into an Escrow Agreement dated 27.11.2009 with Bank of India in which all the money will be held in trust for the benefit of the Consortium Lenders including Applicant Bank. That as per the Escrow Agreement dated 27.11.2009, all the money will be held in trust in Escrow Account for the benefit of Indian Bank and other Consortium Lenders.
26. That HPWD, Corporate Debtor & Bank of India (as Lead Bank) entered into a Substitution Agreement dated 27.11.2009.
27. The Corporate Debtor furnished their various requisite Resolutions dated 06.02.2009, 24.08.2009, 17.08.2009 in respect of the credit facilities granted to Corporate Debtor by the Applicant as being Part of the Consortium of Banks consisting of Lenders led by Bank of India.
28. The Corporate Debtor failed and neglected to pay the instalments. The corporate debtor also committed other defaults in performance of the conditions of the Common Loan Agreement and other Finance Documents.
29. The Corporate Debtor initiated Arbitration Proceedings against HPWD against a dispute pertaining to the Concession Agreement dated 31.01.2009. That an award dated 17.10.2022 (subsequently amended vide award Dated 17.01.2023) has been passed in favour of the Corporate Debtor and against HPWD. However, the Corporate Debtor failed to comply with the terms

and conditions of the financing documents relating to senior debt and has neither cleared the outstanding liability nor regularized the account.

30. As a result, since the Corporate Debtor failed to service the account and clear the outstanding dues of the applicant bank, the applicant bank was constrained to classify the account of the Corporate Debtor as NPA (Non-Performing Asset) in its books in accordance with the extant RBI guidelines with effect from 01.11.2018 by Indian Bank/Financial Creditor and 28.09.2018 by erstwhile Allahabad Bank (since merged with Indian Bank). That the Corporate Debtor time and again has acknowledged their liability to pay the debt owed by them vide letter dated 13.11.2019 & subsequent letter dated 28.07.2022. In November 2023, the financial creditor filed OA in DRT against the corporate debtor to recover the loan account from corporate debtor.
31. The Applicant has proposed the name of Mr. Sanjay Kumar Mishra having IP Registration no. IBBI/IPA-001/IP-P01047/2017-2018/11730.
32. The Financial Creditor claims a sum of Rs. 62,20,34,740.77/- together with interest accrued and penal interest as on 26.10.2023, which is in default. In the present case, the Date of Default is the NPA Date. Date of Default/NPA by Indian Bank/Financial Creditor is 01st November 2018 and Date of Default/NPA by Allahabad Bank (since merged with Indian Bank) is 28th September 2018.

Submissions of the Respondent:

33. The Respondent has contested the present Petition on the following grounds:

A. Petition is filed against a solvent company –

- i. The Respondent has submitted that it is temporarily under financial stress and is still a solvent company. The Respondent has relied upon the decision given by the Hon'ble Supreme Court in the matter of *Vidarbha Industries Power Limited v. Axis Bank Limited* reported in

2022 SCC Online SC 841, pronounced in Civil Appeal No. 4622 Of 2021 on 12.07.2022.

- ii. The Respondent has further relied upon the concession agreement dated 31.01.2009 wherein the Respondent has been granted a concession period of 17 years upto 30.05.2026. Since the Respondent was aggrieved, they invoked arbitration against HPWD and inter alia sought various compensation.
- iii. Vide Arbitral award dated 17.10.2022, the Ld. Sole Arbitrator awarded a principal sum of Rs. 149,56,00,007/- (Rupees One Hundred Forty Nine Crore Fifty Six Lakhs and Seven only) [which amount stood corrected to a sum of Rs. 149,66,72,564/- (Rupees One Hundred Forty Nine Crore Sixty Six Lakhs Seventy Two Thousand Five Hundred and Sixty Four only) in terms of the Additional Award] in favour of the Corporate Debtor together with further interest accruable on such sum at the rate of 2% above State Bank of India, Prime Lending Rate ("SBI PLR") along with costs of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs only) together with simple interest @ 8% p.a. from the date of the award till date of payment and / or realization of the amounts. The total amended / revised awarded amount in favour of the Corporate Debtor is a sum of Rs. 164,81,56,554/- (Rupees One Hundred Sixty Four Crore Eighty One Lakhs Fifty Six Thousand Five Hundred and Fifty Four only) along with costs of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs only).
- iv. The aforesaid Award was challenged by Haryana, Public Works Department, Haryana (Buildings and Roads) Branch, Chandigarh ("HPWD") by way of a Petition filed under Section 34 of the A&C Act before the Ld. District Judge cum Commercial Court, Chandigarh being Petition No. 311/2023 ("S. 34 Petition"). Simultaneously, the Corporate Debtor also filed an execution petition under Section 36 of the A&C Act before the Ld. District

Judge cum Commercial Court, Chandigarh being Application No. EXE/597 /2023 ("S. 36 Petition").

- v. Both the Applications are pending for adjudication. In terms of the Award, a sum of Rs. 437,56,23,757/- (Rupees Four Hundred Thirty Seven Crore Fifty Six Lakhs Twenty Three Thousand Seven Hundred and Fifty Seven only) calculated with interest upto 29.02.2024 is receivable by the Corporate Debtor .
- B. Section 7(5)(a) of the Code is discretionary.
- C. Laws relating to initiation of Corporate Insolvency Resolution Process ("CIRP") - when initiation of CIRP is resisted on the ground of existence of an award in favour of corporate debtor whose amount far exceeds the debt, the Adjudicating Authority has to exercise discretion under Section 7 (5) (a) of the Code to keep the admission in abeyance or even reject the application. The Respondent has relied upon the decision given by Hon'ble Supreme Court in *Vidarbha Industries Power Ltd. vs Axis Bank Ltd. reported in {2022} 2 SCC 352*.
- D. Present Petition is filed contrary to the terms of financing documents, viz. Inter-Creditor Agreement ("ICA") dated 26.08.2009, wherein it has been laid down that action of present nature is to be taken collectively and after all the members of the Consortium have been consulted
- E. Huge sums are paid by the Respondent - Till 29.02.2024, the Corporate Debtor has paid amounts to the tune of Rs. 889.29 crore, of which, a sum of Rs. 230.13 crore is appropriated towards principal outstanding and a sum of Rs. 659.16 crore is appropriated towards interest and other charges. This proceeds to show that despite repaying total sum of Rs. 889.29 crore, outstanding principal still reflects as Rs. 353.87 crore.
- F. OTS Proposal issued by the Corporate Debtor vide letter dated 30.08.2023.
- G. Present Petition is contrary to Preamble & Object of the Code.
- H. Petition is filed beyond the prescribed period of limitation.

34. The Respondent has contested CP(IB) 120 of 2024 on similar grounds.

35. During the pendency of Company Petition(s), the Corporate Debtor filed an IA bearing no.4898(MB)2024 in C.P.(IB)/83(MB)2024 and IA bearing no.4899(MB)2024 in C.P.(IB)/120(MB)2024 under the provisions of Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of National Company Law Tribunal Rules, 2016 ("NCLT Rules") seeking appointment of a Chartered Accountant Firm to operate the Escrow Account and to facilitate the auction and sale of the Award and distribute the proceeds therefrom in terms of the Proposal more particularly stated in the application. It is the contention of the Corporate Debtor in these applications, which are identical, that
- i. There are only two substantial assets which can be monetised under Corporate Insolvency Resolution Proceedings ("CIRP") and inviting Resolution Plan to resolve the dues of the Borrower:
 - (a) The toll revenue which is presently collected by way of IT enabled & automated digital infrastructure viz., Fast Tag; and
 - (b) Receivable of Rs. 454 Crore, as on 30.09.2024 from HRWD under the Award.
 - ii. An Agency for Specialised Monitoring ("ASM") has been appointed by the Financial Creditor/Bank of India since 01.06.2024. The ASM has been engaged to undertake transaction review, audit and authorise in respect of all inflow, receipts, payments & outgoings of the Applicant.
 - iii. All proceeds from the toll collections in respect of the Project are utilised to meet O&M expenses, capital expenditures/Major maintenance and repairs and the entire balance amount is utilised to service the debt obligations of the Applicant. The Applicant's average yearly revenue is ~Rs. 84 Crore and average yearly expenses is ~Rs. 45 Crore. Thus, ~Rs. 40 Crore annually is utilised towards servicing the debt of the Applicant.

- iv. A waterfall mechanism for operating the escrow account for the remainder of the Concession Period be formulated directing inter alia that payments shall be first appropriated towards:
 - a. All taxes due and payable by the Applicant;
 - b. All O&M expenses in connection with the Operations & maintenance of the Project;
 - c. Payments to be made to the Authority in accordance with the Concession Agreement; and
 - d. Remainder amounts available net of taxes be distributed in equal proportion between the Lenders and the Applicant.
- v. The Corporate Debtor has sets out the following Proposal:
 - a. That the Corporate Debtor and the Financial Creditor can explore option of identifying buyer for sale of the Award.
 - b. A joint committee having representatives of the Lenders and of the Corporate Debtor may be constituted, which committee shall be tasked with finalising the terms of reference and further process and mechanism with regard to invitation of bids and finalising all aspects to facilitate the monetization/sale of the Award to meet the end use of defraying the liabilities of leaders.

Findings-

- 36. Heard learned counsel for both the parties and perused the material produced on record.
- 37. There is no dispute that there exists a financial debt and the same is in default. Further, the Corporate debtor has clearly admitted the liability vide its affidavit in reply as well as in the IA 4898/2024 & 4899/2024. The Corporate Debtor time and again has acknowledged its liability to pay the debt owed by him vide letter dated 13.11.2019 & subsequent letter dated 28.07.2022. The same is evident upon perusal of other documents viz. the CRILIC & CIBIL report produced on record by the Applicant. Moreover, OTS proposal letter dated is 30.08.2023, and the present petition i.e.

CP(IB)/83(MB)/2024 is filed on 30.11.2023 and refiled on 11.01.2024. Hence the present petition is filed well within the limitation period. Accordingly, we hold that this application is within limitation period and there exists a financial debt and default in repayment thereof.

38. The Respondent Corporate Debtor has pleaded that the concessionaire agreement is expiring on 30.05.2026 and there remains only 21 months in the Concessionaire agreement validity. The Corporate Debtor is left with only two revenue generating assets i.e. (i) revenue from toll collection for remainder period of concessionaire agreement, and (ii) proceeds of Arbitral Award against HPWD for a sum of Rs. 437,56,23,757/- (:Rupees Four Hundred Thirty Seven Crore Fifty Six Lakhs Twenty Three Thousand Seven Hundred and Fifty Seven only) calculated with interest upto 29.02.2024. The said Arbitral award is in challenge before the District Judge cum Commercial Court, Chandigarh in Petition No. 311/2023. However, the Corporate Debtor is stated to have filed an execution petition u/s 36 of Arbitration & Conciliation Act before District Judge cum Commercial Court, Chandigarh in EXE/597 /2023.

39. The Respondent has relied upon the decision of Hon'ble Supreme Court in case of **Vidarbha Industries Power Limited** (Supra) wherein it was held that –

86. Even though Section 7 (5)(a) of the IBC may confer discretionary power on the Adjudicating Authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner.

88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the

Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation. The example is only illustrative.

40. The decision in case of Vidarbha Industries Power Limited (Supra) was distinguished by Hon'ble Supreme Court later on in case of *M. Suresh Kumar Reddy vs. Canara Bank & Ors. (2023) ibclaw.in 67 SC*. It held that

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 and contended that this Tribunal has discretion to that there is pre-existence of dispute between the parties is not tenable since the same is applicable under S.9 of the IBC and the present petition has been filed under S.7 of IBC.

41. Thereafter, the Hon'ble Supreme Court in *M Suresh Kumar Reddy (Supra)* discussed the facts of the case and held at para 18 that "Even assuming that the NCLT has the power to reject an Application under Section 7 if there were good reasons to do so, in the facts of the case, the conduct of the appellant is such that no such good reason existed on the basis of which NCLT could have denied admission of the Application under Section 7".

42. The Corporate Debtor has vehemently argued that no purpose would be served by admitting the Corporate Debtor into CIRP considering that (a) the term of concessionaire agreement is about to expire; and (b) the only other assets is an award in favor of Corporate Debtor, which can be put for auction and the proceeds could be appropriated by the lenders. The Respondents have also proposed appointment of independent firm of Chartered Accountant to oversee the process of appropriation of net

proceeds of toll collections and proceeds of award auction for the exclusive benefit of the financial creditors. Though, we find substance in the contentions of the Corporate Debtor in this relation, however, one Senior Manager from Bank of India informed this Tribunal that the petitioner Bank of India, who is lead bank also, is not in favor of exploring any other mode, except resolution under CIRP as provided in the Code, for resolution of debt of the Corporate Debtor.

43. Undisputedly, the Applicant had availed loan of Rs. 584 Crore and as on 30.09.2024, the Applicant has repaid Rs. 910.32 Crore, being Rs. 230.12 Crore towards Principal repayment and Rs. 680.19 Crore towards Interest repayment. It is undisputed fact that the toll collections after appropriation of operating expenses is being paid towards the outstanding debt and the said amounts are being adjusted against the interest accruing on such debt. It is also undisputed fact that said monthly payments are not sufficient to service the periodical obligations in relation to the debt due to the consortium lenders. Nonetheless, the Corporate Debtor is stated to have submitted an OTS proposal for Rs. 100 crores, but the same was not accepted by the lenders.
44. On perusal of the minutes of Consortium meeting held on 17.10.2023, we find that the lenders took notice of various deviations in the operation of the business for which clarifications were sought from the Corporate Debtor. During the course of the hearing, this Tribunal had asked the counsel for the Financial Creditors what purpose shall be served by pushing the Corporate Debtor to CIRP process in view of expiry of concessionaire agreement after short period of 21 months and Arbitral Award being agreed to be put for auction for appropriation of proceeds thereof in favor, which significantly covers the outstanding (though both of these assets are not in excess of the dues claimed in the application). The Counsel for the Financial Creditor heavily relied on existence of debt and default and informed this Tribunal that the Petitioners are not willing to let the Corporate Debtor run

under the supervision and control of existing management in view of deviations.

45. Though there may exist circumstance to exercise the discretion vested in this tribunal, this Tribunal is also conscious of the fact that the remaining assets of the Corporate Debtor are not sufficient to discharge the obligations towards its Financial Creditors. It is trite law that this Tribunal cannot enforce an alternate mode of resolution than provided in the Code and accordingly does not have power to issue directions to deal with the assets of the Corporate Debtor as prayed for in IA 4898/2024 & 4899/2024 for settlement of dues of the consortium lender. In view of the ratio of decision in M Suresh Kumar Reddy (Supra), this Tribunal is bound to admit the Petition under section 7 if there exists an undisputed debt and there is a default in payment thereof provided the Petition is within limitation period and the default amount exceeds Rs. 1.00 crore.
46. It is clear that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. The application made by the Financial Creditor is complete in all respects as required by law. Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
47. In view of admission of Corporate Debtor in CIRP in terms of CP(IB) 83 of 2024 and the facts of the case being similar in both the petitions, CP (IB) 120 of 2024 becomes infructuous. Further, IA no.2743/2024 & IA No. 4898(MB)2024 in C.P.(IB)/83(MB)2024 and IA no.2624/2024 & IA No. 4899(MB)2024 in C.P.(IB)/120(MB)2024 are hereby dismissed.
48. The Financial Creditor has proposed the name of **Mr. Rahul Jindal**, Registration No. **IBBI/IPA-001/IP-P02649/2021-2022/14048**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

49. It is, accordingly, hereby ordered as follows: -

- I. The Petition bearing **CP (IB)/83(MB)/2024** filed by **Bank of India** [Identification no.U99999MH1906PLC000243], the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **GF Toll Road Private Limited** [CIN:U74990MH2008PTC189112], the Corporate Debtor, is **admitted**.
- II. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- III. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- IV. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- V. **Mr. Rahul Jindal**, Registration No. **IBBI/IPA-001/IP-P02649/2021-2022/14048**, having registered address at 52/24, Ramjas Road, Karol Bagh, New Delhi - 110005. **Email ID: jindalrahul60@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 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 a period of one

week from the date of receipt of this Order, in default of which coercive steps will follow.

- VII. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- VIII. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- IX. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
- X. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

MK

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)