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2026 INSC 1134

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.12195 OF 2025

DEEPAK RAHEJA AND ANOTHER ... **APPELLANT(S)**

VERSUS

OMKARA ASSETS RECONSTRUCTION PRIVATE LTD. AND ANOTHER ... **RESPONDENT(S)**

WITH

CIVIL APPEAL NO. OF 2026
(ARISING OUT OF DIARY NO.58001 OF 2025)

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. These two statutory appeals under Section 62 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, "the Code") assail the common judgment dated 19.08.2025 of the National Company Law Appellate Tribunal, Principal Bench, New Delhi (hereinafter,

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"the Appellate Tribunal") in Company Appeal (AT) (Insolvency) No. 1040 of 2025 and the connected Company Appeal (AT) (Insolvency) No. 1039 of 2025, dismissing both appeals and affirming two orders of even date, 08.07.2025, of the National Company Law Tribunal, Mumbai Bench, Court-I (hereinafter, "the Adjudicating Authority"), which admitted Company Petition (IB) No. 291 of 2023 and Company Petition (IB) No. 290 of 2023 under Section 7 of the Code and initiating the Corporate Insolvency Resolution Process (hereinafter, "CIRP") against GSTAAD Hotels Pvt. Ltd. and Neo Capricorn Plaza Pvt. Ltd. respectively.

2. The facts, issues, submissions and material in both appeals being substantially common, it is convenient to dispose them by a common judgment, setting out the facts as they arise in Civil Appeal No. 12195 of 2025, pertaining to GSTAAD Hotels Pvt. Ltd. (hereinafter, "the Corporate Debtor"), with reference to the connected appeal pertaining to Neo Capricorn Plaza Pvt. Ltd. (hereinafter, "Neo") as and when necessary. The Appellate Tribunal adopted the same course, and no party suggests that any material distinction arises.

3. By a Loan Agreement dated 26.12.2017 (hereinafter, "the Loan Agreement"), Piramal Finance Ltd., as it was

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then known (subsequently Piramal Capital and Housing Finance Ltd., hereinafter "PCHFL"), extended a term loan facility aggregating Rs.600 crores to the Corporate Debtor and Neo as co-borrowers: a term loan of Rs.450 crores and a Rolling Credit Facility (hereinafter "RCF") of Rs.50 crores to the Corporate Debtor, and a term loan of Rs.100 crores to Neo. The Corporate Debtor owns and operates the JW Marriott Hotel at Bangalore; Neo owns and operates the Crowne Plaza Hotel at Pune.

4. A Cash Management Agreement (hereinafter "the CMA") was executed in January 2018 between the Lender, the Corporate Debtor and the Hotel Operator i.e. Marriott Hotels India Private Limited, under which the gross revenue collections of the hotels were to be deposited into a Revenue Account, of which 66 per cent was to be transferred daily into an Expense Account for the operating expenses of the hotels, and 34 per cent into a Retention Account towards servicing of the debt.

5. The Loan Agreement further obliged the maintenance of a Debt Service Reserve Account (hereinafter "the DSRA") of Rs.8 crores for the Corporate debtor's facilities, under Clause 9 read with the Eleventh Schedule, to be appropriated towards interest and

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principal shortfalls, a DSRA of Rs.2 crores being contemplated for Neo. It is undisputed that Rs.3 crores of that reserve remained undisbursed as on 15.11.2022.

6. The Corporate Debtor additionally availed two facilities under the Government of India's Emergency Credit Line Guarantee Scheme (hereinafter "ECLGS"): ECLGS Facility-1 of Rs.98 crores sanctioned on 29.12.2020 and ECLGS Facility-2 of Rs.65 crores sanctioned on 11.03.2022, each under a separate agreement. A connected ECLGS facility of Rs.19.5 crores was sanctioned to Neo by an agreement dated 30.12.2020.

7. Clauses 27.1 and 27.2 of the Loan Agreement dated 26.12.2017 vested in the lenders an absolute right of assignment, exercisable unilaterally and without the borrower's consent. On 27.12.2022, PCHFL and PHL Fininvest Pvt. Ltd. (subsequently Piramal Enterprises Ltd., hereinafter "PEL") in accordance with these clauses 27.1 and 27.2 of the loan agreement, executed an Assignment Agreement in favour of Omkara Asset Reconstruction Pvt. Ltd. (hereinafter "Omkara" or "the Financial Creditor"), assigning the Term Loan, the RCF, ECLGS-1 and ECLGS-2 in respect of both companies.

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8. On 09.02.2023, four separate Form-D filings recording defaults by the corporate debtor and Neo were registered with National E-Governance Services Ltd. (hereinafter "NeSL"), the Information Utility with which the facilities stood registered, in respect of the Term Loan, the RCF, ECLGS-1 and ECLGS-2 respectively.

9. On 15.02.2023, Omkara recalled the entire outstanding under all four facilities, calling upon the Corporate Debtor to pay Rs.666,53,26,968/- within three days, and upon Neo, by a separate notice, Rs.119,99,23,320/-. The notice of recall recorded that failure to pay any instalment and coupon constitutes an event of default entitling the lenders and the security trustee to exercise all their rights under the Loan Agreement and the ECLGS Loan Agreements.

10. On 09.03.2023, Omkara filed CP (IB) No. 291 of 2023 against the Corporate Debtor and CP (IB) No. 290 of 2023 against Neo under Section 7 of the Code. The date of default in respect of the Loan, ECLGS Facility-1 and ECLGS Facility-2 was stated to be 15.11.2022, the total amount claimed in default being Rs.665,74,77,237/- as on 27.02.2023. By two separate orders dated 09.01.2024 the Adjudicating Authority admitted both petitions, initiated CIRP,

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declared a moratorium under Section 14 of the Code and appointed an Interim Resolution Professional.

11. Meanwhile, the Corporate Debtor on 10th March, 2023 filed Writ Petition No. 6037 of 2023 before the High Court of Karnataka impugning the Assignment Agreement dated 27.12.2022 as contrary to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the circulars of the Reserve Bank of India, on the ground that its account had never been classified as a non-performing asset or a special mention account. The learned Single Judge, High Court of Karnataka, dismissed Writ Petition No. 6037 of 2023 on 28.02.2024, upholding the Assignment Agreement. The Division Bench dismissed Writ Appeal No. 478 of 2024 on 19.05.2024 against the order dated 28.02.2024 and the Special Leave Petition against the writ appeal order dated 19.05.2024 was dismissed by this Court on 25.08.2025. In these parallel proceedings, instituted by the Corporate Debtor itself, both the Single Judge and the Division Bench recorded its submission that it had not contested that the principal or interest payment was overdue at any point of time, the High Court further holding that the corporate debtor's accounts were irregular.

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12. The orders dated 09.01.2024 of the Adjudicating authority admitting the Section 7 applications were challenged in Company Appeal (AT) (Insolvency) Nos. 165 and 212 of 2024. By an interim order dated 24.01.2024 the Appellate Tribunal directed that the Committee of Creditors may not be constituted meanwhile, while requiring that no hindrance be caused to the running of the hotels. By a common judgment dated 08.01.2025 it framed eleven issues, allowed both appeals, set aside the admission orders and revived both company petitions to be heard afresh, its operative direction being in these terms:

> *"65. We make it clear that while deciding these Appeal(s), we are not expressing any conclusive opinion on any of the issues, which are yet to be decided by the Adjudicating Authority consequent to this remand order. Parties shall bear their own costs."*

13. In so remanding, the Appellate Tribunal indicated the questions requiring fresh consideration. These questions, *inter-alia* were that the CMA ought not to have been disregarded merely because its existence had been denied by the Financial Creditor; that the amounts transferred under it towards servicing of debt required consideration before any finding of default; that the DSRA had not been adverted to at all; that the question whether there had been any

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admission of default required consideration; and that the submission concerning utilisation of the ECLGS proceeds to service the lenders' own dues had been rejected upon an end-use certificate alone. Upon each of these matters the Appellate Tribunal expressly disclaimed any conclusive opinion.

14. Pursuant to the remand both the parties filed additional affidavits, replies and sur-rejoinders and were heard at length by the Adjudicating Authority. The Corporate Debtor placed upon record two Review Reports of BK Ramadhyani & Co. LLP, Chartered Accountants, questioning the rate of interest applied by the erstwhile lenders and the treatment of the DSRA and ECLGS amounts. It is of some significance, and is recorded in the order of the Adjudicating Authority, that that review did not find any fault in the computation of the default amount, but questioned the quantum only upon the ground of the alleged inappropriateness of the rate of interest applied. The distinction is material and will be adverted to below.

15. After hearing both parties afresh, the Adjudicating Authority by its order dated 08.07.2025 again admitted both petitions, recording a finding that there exists a financial debt exceeding the threshold

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prescribed under Section 4 of the Code and that the same is in default, that the petition was complete in all respects and it accordingly deserved to be admitted.

16. The Appellate Tribunal upon challenge affirmed each of the findings in the Adjudicating Authority's order dated 08.07.2025. These findings of the two forums, for the sake of brevity are recorded together.

17. Upon the CMA, it was held that Clause 18.39 of that agreement makes it emphatically clear that the CMA and the Escrow Arrangement put in place only a mechanism to channel an agreed percentage of revenue towards debt servicing, and do not constitute an exhaustive arrangement discharging the underlying obligation to repay from any other source acceptable to the Lender, the Appellate Tribunal adding that the balance in the Retention Account nonetheless remains relevant to whether sufficient funds were available. Upon the alleged excess withdrawal of Rs.10,35,88,444/- beyond the 34 per cent ratio, it was held that under Clause 1.B(iv)(a) of the CMA the obligation to deposit any overdrawn amount is cast upon both the Financier and the Owner and that the overdrawn amounts had in any event been appropriated towards obligations the

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Corporate Debtor was bound to discharge under Clause 18.39 of the CMA. It was further held that the overdrawn amounts related to the period of April and May 2023 and not to November 2022 to February 2023 period which is relevant to the application and a refund referable to a period of April-May 2023 would only have increased the default amount. The Clause 2 of the CMA vested with the Operator a right to terminate the Operating Agreement but the Operator never exercised this right and that it was not the Corporate Debtor's case that the amount withdrawn exceeded the Lenders' entitlement.

18. Upon the computation of default as on 15.11.2022, the Adjudicating Authority examined the Statement of Accounts for 15.11.2022 to 30.04.2024, furnished by the Financial Creditor and produced before it by the Corporate Debtor itself. It found interest outstanding under ECLGS-I and ECLGS-II of Rs.1,38,64,767/- and Rs.1,14,59,589/-, and two instalments aggregating Rs.4,08,33,334/- unpaid under ECLGS-I, the total default under the two facilities being Rs.5,46,98,101/- and Rs.1,14,59,589/-. That Clause 17.39 of the ECLGS Agreements was identical to Clause 18.39 of the CMA and although Rs.1,54,93,481.68/- lying in the Retention Account

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was appropriated on 24.11.2022 towards the Loan and RCF accounts, the ECLGS dues remained in default even thereafter.

19. Upon the DSRA, testing the contention upon the Corporate Debtor's own methodology, the Adjudicating Authority found that interest outstanding across all facilities aggregated to Rs.9,87,30,348/-, besides default interest of Rs.2,90,87,114/-. That Clause 29.1 of the loan agreement requires part payments to be appropriated pro-rata, first towards default interest, subsequently towards interest and then towards the principal amount. That neither ECLGS Agreement contains any DSRA provision, nor extends to those facilities the DSRA created under the Loan Agreement. It was observed that even assuming the appropriation of the undisbursed Rs.3 crores under the DSRA and leaving the default interest component wholly out of account then also only Rs.75,95,006/- could be applied toward the ECLGS interest, leaving a default of Rs.1,76,29,350/- in interest besides the default of principal amount of Rs.4,08,33,334/-. The Appellate Tribunal recorded that no liability arose upon the undisbursed sum under the DSRA, that its disbursement could itself have carried interest, and

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that the finding of a subsisting default could not be faulted.

20. Upon the right of recall, it was held that, the first disbursement having taken place on 28.12.2017 and five years having expired on 27.12.2022, the right to recall accrued dehors any default under Clause 7.2.6 of the loan agreement, to which the recall notice referred. Upon solvency, it was concluded, after examining revenue, operating expenses, the owner's profit and the liabilities, that the material belied the claim of solvency founded merely upon a positive EBITDA, the Corporate Debtor having failed to service its interest and principal obligations month upon month until December 2023, and that no exceptional circumstance warranted the exercise of discretion, assuming any to exist under Section 7.

21. Upon res judicata, the Appellate Tribunal held that paragraph 65 of its remand judgment made clear that no conclusive opinion had been expressed upon any issue left for decision, the observations there going only to the unsustainability of the earlier conclusions for non-consideration of relevant material. Upon the One-Time Settlement, it held that the revised proposal of Rs.743.71 crores, brought on record by the Appellant himself, made it clear that debt and default

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stood admitted. Upon the authorities, it held that the proposition that an event of default must arise from the agreement admitted of no dispute, that event being noticed in Clause 19 of the loan agreement. It concluded that no ground existed to interfere with the orders dated 08.07.2025 of the Adjudicating Authority.

22. Learned senior counsel for the Appellants, while assailing the aforesaid findings firstly contends that the findings recorded in the remand order, particularly upon the CMA, the DSRA and the alleged diversion of the ECLGS proceeds attained finality and operated as res judicata. That the CMA, if properly applied, would show that debt-servicing obligations were in fact being met through the Retention Account, and that the excess withdrawal of Rs.10,35,88,444/- from the retention account would establish that there was no default upon 15.11.2022 in the loan account or under the ECLGS facilities. The Section 7 application pleaded no facts of default in the Term Loan account, the default being confined to the ECLGS facilities, which were not even due and payable on that date.

23. It was further contended that the DSRA of Rs.8 crores for the Corporate Debtor's facilities and Rs.2 crores

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for Neo existed solely for appropriation against a default in the Term Loan payments, the ECLGS facilities and any interest thereon, and that its utilisation would have ensured that no default occurred in the first place. On the Corporate debtor's and Neo's financial position, it was submitted that they both are profit-earning companies, successfully running the two hotels, with positive EBITDA of Rs.81 crores and Rs.10 crores respectively in the financial year 2022-23 and the impugned order has put two running hotels into insolvency, which is not the purpose and object of the Code. Lastly, reliance was placed upon *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*[1] for the propositions that an event of default must arise from the agreement between the parties, that any discretion available to the Adjudicating Authority is not to be exercised arbitrarily or capriciously, and that the cash liquidity and financial health of the corporate debtor are relevant considerations.

24. *Per contra,* learned senior counsel for Respondent No.1 submits that Omkara's status as an assignee and consequently as a financial creditor under Section 5(7) of the Code stands conclusively

[1] (2022) 8 SCC 352

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established by the Assignment Agreement read with Clauses 27.1 and 27.2 of the loan agreement which was infact independently upheld by the High Court of Karnataka as well as by this Court. That the Appellate Tribunal having expressly refrained from any conclusive opinion, the fresh consideration it directed was in fact undertaken and the Corporate Debtor never denied the existence of a debt, its entire defence proceeding upon the footing that default could be cured through appropriation of the DSRA and the CMA amounts, which is in substance a concession that default did occur, the only live dispute being one of quantum and curability rather than existence.

25. It was further submitted that the total default as on 15.11.2022 was Rs.17,16,29,518/- in respect of the Corporate Debtor and a minimum of Rs.2,64,99,473/- in respect of Neo. The CMA, the learned senior counsel contended, was no more than a mechanism for the cash flow operations of the hotels. The insufficiency in the Retention Account meant that the borrowers were bound to pay from other funds acceptable to the Lender and that any amount withdrawn was appropriated towards the debt obligation of the debtors, it not being the Appellants' case that any sum exceeding the

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obligation was withdrawn. The DSRA amount lay within the total sanctioned loan quantum and its disbursement would have increased both the loan and the interest liability. Reliance was placed upon *Innoventive Industries Ltd. v. ICICI Bank*[2], *E.S. Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd.*[3], *M. Suresh Kumar Reddy v. Canara Bank,*[4] the review order in *Axis Bank Ltd. v. Vidarbha Industries Power Ltd.*[5], *Maitreya Doshi v. Anand Rathi Global Finance Ltd.*,[6] *Devas Multimedia (P) Ltd. v. Antrix Corpn. Ltd.*[7], and *Kalyani Transco v. Bhushan Power & Steel Ltd*[8].

26. We have heard learned senior counsel for the parties at length and have perused the record.

27. At the outset it would be apposite to advert to the scope of appeal under Section 62(1) of the Code. Section 62(1) permits an appeal to this Court against an order of the Appellate Tribunal "on a question of law arising out of such order". This Court is not required or obliged, as a first appellate court might be, to undertake a fresh appraisal of evidence or to reassess concurrent findings of fact. Where the

[2] (2018) 1 SCC 407
[3] (2022) 3 SCC 161
[4] (2023) 8 SCC 387
[5] (2023) 7 SCC 321
[6] (2023) 17 SCC 606
[7] (2023) 1 SCC 216
[8] 2025 SCC OnLine SC 2093

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findings upon the existence of a financial debt, the occurrence of default, the authenticity of documents or the acknowledgment of liability are recorded by the Adjudicating Authority, these on being affirmed by the Appellate Tribunal, attain the character of concurrent findings of fact, and therefore, any interference is warranted only where they are shown to be perverse, based upon no evidence, arrived at by ignoring material evidence, or founded upon an erroneous legal standard. The expression "on a question of law" excludes a re-hearing upon facts. An appellant cannot, under the guise of raising a question of law, invite this Court to re-weigh evidence or substitute its own conclusions for those concurrently arrived at findings by the tribunals below.

28. That restraint is not merely a matter of statutory construction. The Adjudicating Authority and the Appellate Tribunal are specialised tribunals, constituted with a combination of judicial and technical members, precisely so that matters requiring close engagement with accounts, ledgers, financial covenants and commercial documents may be resolved by bodies possessed of the relevant expertise. The Bankruptcy Law Reforms Committee (BLRC), as noticed by this Court in *Swiss Ribbons Pvt.*

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Ltd. v. Union of India[9], had identified as a defect of the antecedent regime that the fora entrusted with insolvency may lack the business or financial expertise, information or bandwidth to decide such matters and the constitution of specialised tribunals was the legislative answer. Where two such bodies have concurrently examined the same statements of account, the same CMA and DSRA clauses and the same Review Reports, and arrived at the same finding of default upon the same date, this Court ought not lightly to substitute its own reading of that material for theirs. That principle, articulated in *Maitreya Doshi (supra)* and *Devas Multimedia (supra)*, applies with particular force under the Code. In *Kalyani Transco (supra)* it was held that where a concurrent view has been taken by two adjudicating authorities under a special statute, interference is unwarranted unless that view was in ignorance of mandatory statutory provisions, based upon extraneous consideration, or ex-facie arbitrary or illegal.

29. It follows that the question before this Court is not whether the arithmetic of the Adjudicating Authority could have been undertaken differently, or whether some alternative appropriation methodology might

[9] (2019) 4 SCC 17

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have yielded a different figure. The question is whether the two forums applied the correct legal standard in determining that a default within the meaning of the Code had occurred. That is a question of law, and it is that question which this Court proceeds to answer, after first clearing away the threshold objection.

30. The threshold objection is that Omkara is not a financial creditor within the meaning of Section 5(7) of the Code at all, so that the condition precedent for an application under Section 7 is wanting. Section 5(7) defines a financial creditor as any person to whom a financial debt is owed and expressly "includes a person to whom such debt has been legally assigned or transferred to". The scope of the definition is unequivocal, and the only question is whether the assignment in favour of Omkara was a legal assignment. That question has been litigated to finality, upto this Court, when the SLP challenging the Division Bench judgement of the Karnataka High Court was dismissed on 25.08.2025. The legality, validity and enforceability of the assignment was directly and substantially in issue in those proceedings, and the determination stands conclusively settled *inter partes*.

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31. The attempt to reopen the validity of that assignment of debt is barred by the principles underlying issue estoppel. Issue estoppel arises where a particular issue, forming a necessary ingredient in a cause of action, has been litigated and decided in a first action, and, in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue. Three elements in that regard must be satisfied i.e. identity of issue, finality of the earlier decision upon the merits, and identity of parties or their privies; each of which is satisfied here. The doctrine rests upon finality, consistency and judicial discipline, and once a finding has attained finality between the parties, neither party may seek a fresh adjudication upon the same issue merely because the subsequent proceedings arise under a different statute or seek a different relief. To permit the Appellants to reopen a concluded legal issue in the present proceedings would tantamount to a collateral attack upon binding determinations that have attained finality up to this Court.

32. There is a further and independent reason apart from issue estoppel that bars the challenge to the validity of the assignment agreement before the tribunals

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below. The jurisdiction of the Adjudicating Authority under Section 7 is confined to determining the existence of a financial debt and the occurrence of default. It is not an appellate forum over judgments rendered by competent constitutional courts**.** The status of the assignee having been conclusively affirmed, the Adjudicating Authority could not have undertaken a *de novo* examination of the validity of assignment, and it did not err in declining to do so.

33. With the status of the Respondent no.1 as a financial creditor established, and the existence of the underlying financial debt itself being undisputed, the appeals stand reduced to the questions of law now to be framed.

34. The Accounting disputes aside, these appeals principally concern the question of what a financial creditor must establish to prove a default under section 3(12) of the Code. Two questions of law arise from the same:

QUESTION I: What is the evidentiary threshold required to satisfy the Adjudicating Authority that a "default" within the meaning of Sections 3(12) and 7 of the Insolvency and Bankruptcy Code, 2016 has occurred?

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QUESTION II: What nature of documentary material may legitimately be relied upon by the Adjudicating Authority for recording a satisfaction that a "default" within the meaning of Section 7 has occurred?

35. Before turning to the statutory scheme, it is pertinent to recall the legislative purpose that underlines the Code. The Code is, first and foremost, a legislation for the time-bound reorganisation and resolution of corporate debtors, so that the value of a stressed enterprise is preserved rather than allowed to erode through delay. Speed is not an incidental virtue of the Code, it is its central design principle**.** The architecture of Section 7, including the fourteen-day period for ascertaining default under sub-section (4), is built around the elimination of exactly the kind of delay that was the characteristic of the antecedent regime.

36. The means by which the Code secures that expedition must next be noticed, for the legislature did not treat every creditor alike in prescribing what must be shown before the process is set in motion. The distinction between financial and operational creditors under the Code is instructive in this regard. Financial contracts generally involve large sums and specified repayment schedules, defaults entitling the

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creditor to recall the loan in totality, whereas operational contracts carry no such stipulation and are recurring in nature. Financial debts owed to banks and financial institutions are, by their very nature, well-documented, and a default committed in respect of them is readily verifiable. That characteristic is the evidentiary premise upon which the trigger mechanism for financial creditors rests, and it explains why the Code dispenses, in their case, with the notice-and-dispute machinery prescribed by Sections 8 and 9 of the Code for operational creditors. The same asymmetry is carried into the statutory obligations of the two classes: Section 215(2) of the Code requires that a financial creditor shall submit financial information and information relating to assets over which a security interest has been created, whereas Section 215(3) of the Code provides only that an operational creditor may do so.

37. The Bankruptcy Law Reforms Committee (BLRC) report explained the rationale in terms leaving no room for doubt. Since financial creditors have electronic records of their liabilities filed with the Information Utilities, an incontrovertible event of default upon any financial credit contract is readily verifiable by accessing that system, whereas the

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evidence available to an operational creditor may be electronic or physical and until such time as the Information Utilities became ubiquitous, financial creditors might establish default in a manner similar to operational creditors. Two propositions of importance emerge, first, that an Information Utility record was conceived as the primary and readily verifiable evidence of a financial creditor's default and second, that other means of proof were expressly contemplated in the meanwhile. The Code was thus designed from the outset with a hierarchy of proof in contemplation, an Information Utility record at the apex and other documentary material in the alternative.

38. The object of establishing Information Utilities was that considerable time was previously lost before all parties obtained the relevant information, that disputes upon such facts could consume years in court, and that it accordingly envisaged a competitive industry of information utilities holding an array of information about all firms at all times, so that upon commencement of the resolution process undisputed and complete information would become available to all persons involved within less than a day. An interpretation of Section 7 requiring the Adjudicating

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Authority to reconcile every contested ledger entry before recording its satisfaction would defeat that purpose entirely, and would restore the very mischief the Code was enacted to remedy.

39. In *Innoventive Industries (supra),* this Court had explained the operational terms in which the scheme of Section 7 would operate which applies fully to the present enquiry. It held that the moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete. It further held that the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred, and that it is of no matter that the debt is disputed so long as the debt is due.

40. Against the backdrop of the legal position enunciated above, the starting point to answer the first question of law formulated by this Court must be the statutory definition. Section 3(12) of the Code provides:

> *"(12) 'default' means non-payment of debt when whole or any part or instalment 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;"*

41. The definition is deliberately undemanding. It neither requires that the entire debt be due, nor that the full

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quantum be free of dispute, but only that some part of what is due and payable has not been paid. The words "whole or any part or instalment" are not inessential, they are the operative words of the definition, and they establish that the statutory conception of default is satisfied by a shortfall, however partial.

42. It follows that a fundamental distinction must be maintained between two matters which the Appellants' submissions persistently conflate. The occurrence of default is a historical and static event which crystallises upon the date a debt became due and was not paid. The quantum of debt outstanding, by contrast, is dynamic, fluctuating upon account of accruing interest, default interest, charges, adjustments and part-repayments. The two enquiries are different in kind, and Section 7 is concerned with the first i.e. the occurrence of default.

43. Section 7(4) of the Code requires the Adjudicating Authority to ascertain the existence of a default within fourteen days of receipt of the application. That timeline is unintelligible if "ascertainment" is read to mean a full reconciliation of every contested ledger entry, every interest-rate reset and every rupee of appropriation across separate facilities spanning

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several years. The fourteen day window is the period allotted for a summary determination of a historical fact, and the legislature in prescribing this time has itself implicitly indicated the nature of the enquiry it contemplates. For the purposes of Section 7, therefore, the Adjudicating Authority is concerned only with the existence of a financial debt and the occurrence of default. It is not required to determine, to the last rupee, the exact outstanding liability, as a civil court would in a suit for recovery of money.

44. The standard applicable at the admission stage is one of preponderance of probabilities upon the documentary material placed on record. The threshold is deliberately modest which is a summary, *prima facie* finding of financial debt and default, grounded in documentary evidence, rather than a full trial upon disputed facts. It is the substance of default, not the technical formality of proof, that must govern proceedings under Section 7. Where the records of an Information Utility by themselves, or the loan documents, account statements, balance confirmations, acknowledgements of liability, one-time settlement proposals and contemporaneous correspondence taken collectively, demonstrate that a sum exceeding the statutory threshold had become

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due and remained unpaid, the Adjudicating Authority is not expected to defer admission merely because the parties dispute the computation of interest, penal charges or other accounting entries. Such disputes may bear upon the ultimate quantification of the claim but they do not negate the occurrence of default.

45. The conclusion that the Adjudicating Authority under the Section 7 proceedings is not required to adjudicate upon the exact quantum of debt due from a corporate debtor is confirmed by the internal architecture of the Code, which draws a clear line between the threshold determination of debt and default under Section 7 and the verification and quantification of claims during the CIRP. Upon admission, the Interim Resolution Professional is charged under Section 18(b) of the Code with the receipt and collation of all claims. The IBBI (CIRP) Regulations, 2016 empower him to call for such evidence or clarification as he deems fit in substantiation of a claim in whole or in part, to verify every claim so received, and to maintain a list of creditors recording, against each, the amount claimed and the amount admitted. The Committee of Creditors is then constituted under Section 21 of the Code upon the claims so admitted.

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46. The role so cast upon the Resolution Professional is administrative and not quasi-judicial in character, his determinations being subject throughout to the oversight of the Adjudicating Authority. That is precisely the point. The Code establishes a two-stage process i.e. a summary determination of default at the threshold, and a detailed verification of quantum thereafter, with judicial supervision available at the second stage. Were the Adjudicating Authority required at admission to determine conclusively the precise outstanding liability, the functions entrusted to the Resolution Professional under Section 18 of the code and IBBI(CIRP) Regulations would be rendered otiose. A construction producing that result cannot be correct. The trigger for initiation of the CIRP is the occurrence of a default, not the final adjudication of the creditor's entire claim.

47. Question I as framed in paragraph 34 above is answered accordingly in terms that the evidentiary threshold for satisfying the Adjudicating Authority that a default within the meaning of Sections 3(12) and 7 has occurred is a summary, *prima facie* threshold, to be discharged upon the preponderance of probabilities from the documentary material placed on record. It requires a proof of the occurrence of

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default, a static historical event, and not the conclusive determination of the quantum of debt outstanding. Disputes as to quantification do not negate default and do not arrest admission as long as the statutory threshold requirement under Section 4 of the Code is satisfied.

48. Since Section 7 of the Code does not contemplate a forensic reconstruction of accounts, the Code and the Regulations promulgated thereunder furnish guidance upon what documentary material the Adjudicating Authority may treat as sufficient. That guidance yields a hierarchy.

49. Section 7(3)(a) of the Code requires the financial creditor to furnish, with the Section 7 application, "record of the default recorded with the information utility or such other record or evidence of default as may be specified". Section 7(4) of the Code provides:

> *"(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)."*

50. Section 7(3)(a) places the record of default with the Information Utility first among the materials the financial creditor may furnish, and Section 7(4) directs ascertainment "from the records of an

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information utility", and only in the alternative, signalled by the disjunctive "or", upon the basis of other evidence. The Information Utility record is thus, by statutory design, a self-sufficient basis for the Adjudicating Authority's ascertainment. It is not one item among many in an undifferentiated evidentiary mass.

51. The operational procedure underlying an information utility record as provided in the IBBI (Information Utility) regulations deserves statement, since it explains the weight an authenticated record carries. A creditor submitting information of default must furnish proof of the debt and proof of the default, so that what is placed before the Information Utility is not a bare assertion but a documented filing supported at the threshold by the underlying record. The Information Utility then delivers that information to the debtor, seeking confirmation within the specified time, and upon his failure to respond issues three reminders, allowing seven days in each instance. Only two consequences follow. Where the debtor confirms the information of default, or does not respond even after three reminders, the status recorded is that of authenticated and a Record of Default is issued. Where the debtor disputes it, the

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status recorded is that of disputed and what is issued is an Information of Dispute. The mechanism is disciplined at both ends: the creditor must substantiate the default when he files it, and the debtor is notified, reminded three times over, and invited to give reasons and evidence before a Record of Default is issued. It thus gives such records a reliability exceeding that of ordinary private documents, because it embeds within the record itself the debtor's own opportunity, and failure, to contradict it.

52. The legal weight that ought to be given to an authenticated information utility record finds reinforcement in the general law of evidence. The process of authentication functions, in substance, as an admission of the debt and the default as between the parties to it. A debtor who does not dispute a default recorded against it within the authentication window has, by its conduct, permitted the creditor and the other stakeholders in the process to treat that default as accepted. Section 31 of the Indian Evidence Act, 1872 (hereinafter, "IEA") or Section 25 of the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter, "BSA") clarifies that such an admission is not by itself conclusive proof of the matter admitted, but expressly

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provides that an admission may operate as an estoppel under the provisions that follow. Section 115 of the IEA or Section 121 of the BSA embodies exactly that estoppel, precluding a party who by its declaration, act or omission has intentionally caused or permitted another to believe a thing to be true and to act upon that belief from afterwards denying its truth.

53. A corporate debtor which allows an Information Utility record to go unchallenged through the authentication process, thereby causing the Adjudicating Authority and the financial creditor to proceed upon the footing that default is undisputed, cannot subsequently be heard to deny the fact of that default in the Section 7 proceedings itself. The "not conclusive" language of Section 31 of the IEA and the estoppel under Section 115 of the IEA are not in conflict but they answer two different questions. Section 31 of the IEA clarifies that an authenticated record is not, as a matter of general evidentiary theory incapable of being contradicted by any evidence whatsoever. Section 115 tells us that a particular debtor, in those circumstances, is precluded from being the party to contradict it.

54. The evidentiary burden upon a corporate debtor seeking to rebut a record of default issued upon

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authenticated status is accordingly substantially higher than the ordinary threshold of a mere plausible dispute or a bare preponderance arising from self-serving assertions. To permit easy rebuttal of such documentary evidence through bald denials would defeat the legislative intent underlying Chapter V of Part IV of the Code relating to information utilities and would return the law to the very condition of years-long factual controversy regarding the existence of default in the first place which the BLRC identified as the principal source of delay in insolvency resolution proceedings.

55. It can accordingly be said that an authenticated Information Utility record, that is to say a Record of Default, does not become irrebuttable or legally conclusive proof of default in the abstract, but it creates a presumption of very high evidentiary value, displaceable only by clear, cogent, credible and compelling material, and not by bare denial, by bookkeeping disagreement, or by a claim unsupported by any material whatsoever. In the absence of material displacing such presumption, the Record of default, standing alone is sufficient to *prima facie* establish the occurrence of default for the purposes of Section 7.

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56. Where the Information Utility record is unavailable, or is contested upon grounds requiring more than bare denial to resolve, or is simply not the sole plank upon which the financial creditor has chosen to rest, the Code and the relevant Rules supply an alternative body of material to establish default under Section 7. Documents as given under Part V of Form 1 appended to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 *inter-alia* include an order of a court, tribunal or arbitral panel adjudicating upon the default, the latest and complete copy of the financial contract reflecting all amendments and waivers to date, a record of default as available with any credit information company, copies of entries in a bankers book in accordance with the Bankers Books Evidence Act, 1891 and it even includes a Record of default with the information utility, if available.

57. None of that material as enumerated in Part V of Form 1 of the IBC (Application to Adjudicatory Authority) Rules, 2016 be treated as sufficient upon its own in the manner that a record of default issued by an Information Utility is, as it operates upon a different legal footing. Taken collectively, and weighed against one another, it may establish the occurrence of

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default upon the summary standard which governs Section 7. The governing test at this tier, in relation to documents other than the information utility record, is not one of strict evidentiary admissibility as required in a civil trial. It is whether the documentary material before the Adjudicating Authority objectively and collectively demonstrates that a financial debt became due and remained unpaid, so as to constitute a 'default' warranting initiation of the CIRP.

58. Question II as framed in paragraph 34 above is thus, answered that the documentary material upon which the Adjudicating Authority may find its satisfaction admits of a hierarchy. At the first tier stands a record of default issued by an Information Utility, which is by itself sufficient, carrying a presumption of high evidentiary value displaceable only by clear, cogent, credible and compelling material. At the second tier stands the body of other documentary material enumerated in Part V of Form 1 of IBC (Application to Adjudicatory authority) Rules, 2016 and its analogues, none of which is individually sufficient in the same manner as record of default issued by an Information Utility, but which, if taken collectively, may establish default upon the summary standard governing Section 7.

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59. Applying that hierarchy to the case at hand, two distinct points arise, and neither should be conflated with the other. The first concerns the Information Utility record. Four Form-D filings recording a default were registered with NeSL on 09.02.2023, and those records stood deemed authenticated as the IBBI (Information Utilities) Regulations then provided. Such authentication does not conclusively establish the precise quantum in default. It does, however, amount to a statutory acknowledgement of the occurrence of default, carrying substantial evidentiary value and operating as a deemed admission of that fact. The first tier thus served its purpose, it confirmed that a default was registered against these facilities and went unchallenged.

60. The Appellants contend that the NeSL filings recorded the full outstanding under each facility as being in default before the recall notice was issued, and that a loan not yet recalled could not be treated as wholly in default and further, that the facility-wise figures recorded with NeSL do not correspond to the smaller, date-specific figures relied upon in the petition. That contention misapprehends the function which the Information Utility record performed in this case, and leads to the second point.

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61. The second concerns the figure of Rs.17,16,29,518/-, upon which both forums relied as the total default as on 15.11.2022 in respect of the Corporate Debtor, and the corresponding minimum figure of Rs.2,64,99,473/- in respect of Neo. Because the Corporate Debtor's case throughout was that the alleged default stood cured upon the proper application of the DSRA and CMA mechanisms, and not that no default had occurred, the enquiry below was necessarily directed to the narrower question whether that contention of the corporate debtor was sustainable, and not to reconciling the facility-wise figures recorded with the Information Utility against the date-specific computation of default. The figure was drawn cumulatively from the Statement of Accounts, furnished by the Financial Creditor, never disputed as to authenticity and produced by the Corporate Debtor itself, from other documents such as the two BK Ramadhyani review reports, which questioned only the rate of interest and not the computation of default, from the recall notice and from the Corporate Debtor's own letters of 23.12.2022 and 11.01.2023 seeking a settlement upon the footing of an admitted shortfall. This is the second tier operating exactly as designed. Where the fact of default is not genuinely disputed, the role of the first

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tier was to confirm that a default was registered and went unchallenged, while the quantum crossing the statutory threshold was properly drawn from the fuller, collective record. There is no inconsistency between the two, and no error of law appears in the approach adopted by the tribunals below.

62. Both figures in the Section 7 petition comfortably exceed the minimum threshold prescribed under Section 4. The precise reconciliation of the aggregate against the figures which each NeSL Form-D separately records is accordingly immaterial to the outcome. That follows directly from the static-default principle established in answer to Question I framed by this court. Once a default of a magnitude comfortably crossing the threshold is shown by material that is not genuinely disputed, the Corporate Debtor's contentions upon the CMA and the DSRA having been addressed upon a consideration of the relevant provisions of each by both the Adjudicating Authority and the Appellate Tribunal, further precision in quantification is a matter for the claims process during the CIRP, and not a precondition to admission under Section 7.

63. The letter dated 23.12.2022, written by appellant no.1 on behalf of the Corporate Debtor and Neo to its

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lenders within six weeks of the pleaded date of default and before the assignment, is to the same effect. It recorded that the escalation in the rate of interest by the lender had severely curtailed plans to commence repayment of principal and that the entire surplus cash flow had been absorbed in servicing the additional interest. That the revenues had fallen by more than ninety per cent during the pandemic, some four hundred employees had been retrenched and the hotel at Pune had remained closed from May 2021 to January 2022, the companies had at times been unable to meet salaries or the cost of maintaining the hotel and that the ECLGS facilities had been applied principally towards payment of the lenders' interest and repayment of the loan. The letter is a contemporaneous document of the companies' own authorship, written before the institution of these proceedings and untouched by the exigencies of litigation, its contents cannot be reconciled with the case now advanced that nothing stood due and unpaid as on 15.11.2022. To this must be added the admission recorded by the High Court of Karnataka in the proceedings instituted by the Corporate Debtor itself, regarding certain overdue principal and interest. An admission recorded in judicial proceeding instituted by the party making it is binding upon that

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party and cannot be resiled from in collateral proceedings.

64. There is finally a finding at paragraph 6.6 of the order of the Adjudicating Authority which is of particular significance. The adjudicating authority found that the cash accruals available with the Corporate Debtor remained insufficient, right up to December 2023, to meet its service obligations under the credit facilities, and that a default persisted through that subsequent period as well, even leaving aside the recall of the whole of the facilities. That independently undercuts the assertion that the default as on 15.11.2022 was capable of being cured. The shortfall was not a momentary occurrence, attributable ostensibly to a mis-appropriation of the Retention Account in a single month, it continued month upon month, up to the very eve of the first admission order of the Adjudicating Authority.

65. The contention of the Appellants that the Corporate Debtor and Neo are profitable businesses and their admission into CIRP is contrary to the object of the Code, requires a considered answer, both as a matter of law and as a matter of the economic premise upon which it rests. Viewed from an economic perspective, it conflates two distinct concepts. A profitable

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company with a positive EBITDA may nonetheless be wholly unable to service its debt if the repayment obligations falling due exceed its operating profit. Conversely, a loss-making company may have ample liquidity to meet its obligations. EBITDA, being earnings before interest, taxes, depreciation and amortisation, is by definition computed before interest, and says nothing whatsoever about a company's capacity to meet cash obligations to its lenders as and when they fall due. The metric relevant to that question is the Debt Service Coverage Ratio. The Corporate Debtor's own audited financial statements record a Debt Service Coverage Ratio of 0.12 for the financial year 2022-23, meaning that its internal accruals covered only 12 per cent of that year's debt obligations. It is a figure the Appellants cannot dispute as it was drawn from their own books. Profitability is accordingly not merely legally irrelevant to the existence of default under Section 7 but an economically unreliable proxy for solvency.

66. It is appropriate to state the underlying principle, since the debate regarding profitability and solvency recurs in matters of this kind. The Code is premised upon timely intervention rather than terminal insolvency. Its objective is not to defer insolvency

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proceedings until the corporate debtor has deteriorated to a stage at which liquidation is the only remaining outcome, but to identify and resolve financial stress at its earliest legally cognisable manifestation, namely the occurrence of a default. It is for this reason that the legislature has adopted "default" under Section 3(12), and not commercial or balance-sheet insolvency as the jurisdictional trigger. Any interpretation requiring a financial creditor to await the corporate debtor's irreversible financial collapse before invoking the Code would undermine its preventive and remedial architecture and defeat its central objective of facilitating resolution in preference to liquidation.

67. The conclusions reached by this Court upon both the questions of law find further reinforcement in the amendments effected to Section 7(5) of the Code by the Insolvency and Bankruptcy Code (Amendment) Act, 2026, notified in April 2026. Section 7(5), as amended, provides:

> *"(5) The Adjudicating Authority **shall**, within fourteen days of the receipt of the application under sub-section (2), by an order—*
> *(a) admit the application, if it is satisfied that a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceeding pending against the proposed resolution professional; or*
>
> ***xxx xxx xxx***

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> ***Explanation I.***—*For the purposes of this sub-section,* ***it is hereby clarified*** *that where the requirements under clause (a) have been complied with, no other ground shall be considered to reject an application filed under this section.*
> ***Explanation II.—For the removal of doubts, it is hereby clarified*** *that where a record of default in respect of a financial debt owed to a financial institution recorded with the information utility has been furnished along with the application filed by such financial institution under this section, such record shall be considered sufficient for the Adjudicating Authority to ascertain the existence of default under this section."*

68. The amendment operates upon this field in three respects. First, the substitution of "shall" for "may" in Section 7(5)(a) leaves no room for a discretion to refuse admission once the statutory conditions are satisfied, the Adjudicating Authority being now mandated, and no longer merely permitted, to admit a Section 7 application. Secondly, Explanation I provides that upon satisfaction of those conditions in Section 7(5)(a), no other ground shall be considered for rejection, thereby confining the Adjudicating Authority to an examination of whether the statutory preconditions exist and excluding every consideration *dehors* the statute. Thirdly, Explanation II declares a Record of Default accompanying the application "sufficient" for ascertainment, the use of that word with "shall" signifying that the creditor's evidentiary burden to prove a default stands discharged upon its

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production and that no independent or additional evidence may be insisted upon by the Adjudicating Authority.

69. Neither explanation creates new law. Both are introduced by the familiar language of clarification and removal of doubt, and neither alters the pre-existing position, each makes explicit only what was already implicit in the Code. The sufficiency of an Information Utility record was already carried by Section 7(4) and by the design of the Code. The hierarchy set out in answer to the second question of law framed in paragraph 34 above is thus placed beyond cavil by express legislative enactment, and the reasoning of this Court would have been identical had the amendment not been effectuated.

70. A word is due upon the Information Utility mechanism itself. It is an innovation of Indian origin, without any direct parallel in comparable insolvency regimes at the time of its introduction. A regulated repository of financial information, authenticated through the debtor's own participation or acquiescence, designed so that the fact of default may be ascertained at the threshold without recourse to a protracted enquiry. Almost ten years have now passed since the Code came into force. The framework has matured,

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financial creditors submit the information of default as a matter of routine, and the corporate debtors can no longer claim unfamiliarity either with the process of authentication or with the consequences of silence. The Bankruptcy Law Reforms Committee's observation that until Information Utilities became ubiquitous financial creditors might establish default in the manner available to operational creditors was addressed to a period of transition and that period has long passed. It is accordingly imperative that the Adjudicating Authorities accord the weight which the Code, and now Explanation II to the amended Section 7(5), assign to it.

71. It is convenient to summarise the conclusions reached:

(i) The jurisdiction of this Court under Section 62 of the Code is confined to questions of law arising out of the order of the Appellate Tribunal. Where the Adjudicating Authority and the Appellate Tribunal have concurrently returned findings of fact and law upon the same material, those findings are not to be disturbed unless shown to be perverse, based upon no evidence, arrived at by ignoring material evidence, or founded upon an erroneous legal standard.

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(ii) The status of the Respondent no.1 as a financial creditor within the meaning of Section 5(7) of the Code stands conclusively established by the Assignment Agreement dated 27.12.2022, the validity of which has been upheld by the High Court of Karnataka and affirmed by this Court. The challenge to the assignment is barred by the principles of issue estoppel.

(iii) Section 7 of the Code establishes a summary jurisdiction. The evidentiary threshold for ascertaining default is that of preponderance of probabilities upon the documentary material placed on record, and not a forensic reconciliation of accounts. The occurrence of a default is a static historical event whereas the quantum of a debt outstanding is dynamic. The role of the Adjudicating Authority at the admission stage is confined to ascertaining the existence of debt and default.

(iv) The documentary evidence upon which the Adjudicating Authority may record its satisfaction admits of a hierarchy. At the first tier stands a record of default issued by an Information Utility, which is by itself sufficient and which creates a presumption of high evidentiary value, displaceable only by clear, cogent, credible and compelling material and not by

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bare denial or bookkeeping disagreement. At the second tier stands the other documentary material enumerated in Part V of Form 1 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and its analogues which *inter-alia* includes loan agreements, statements of account, balance confirmations, acknowledgements of liability, and contemporaneous correspondence, which, taken collectively, may establish default upon the summary standard governing Section 7.

(v) Profitability is neither legally relevant to, nor economically probative of, the capacity to service debt. The Code proceeds upon the principle of timely intervention rather than terminal insolvency, and adopts 'default' under Section 3(12) of the Code, not commercial or balance-sheet insolvency, as the jurisdictional trigger.

(vi) Upon the record in these appeals, a default above the threshold prescribed under Section 4 of the Code is established.

72. For the reasons aforesaid, this Court finds no merit in either of these appeals and are, therefore dismissed. The order dated 08.07.2025 passed by the National Company Law Tribunal, Mumbai Bench, Court-I, in CP (IB) No. 291 of 2023, as affirmed by the judgment

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dated 19.08.2025 of the National Company Law Appellate Tribunal, Principal Bench, New Delhi, in Company Appeal (AT) (Insolvency) No. 1040 of 2025; and the order of even date passed in CP (IB) No. 290 of 2023, as affirmed in Company Appeal (AT) (Insolvency) No. 1039 of 2025, are upheld. The Corporate Insolvency Resolution Process in respect of both Corporate Debtors shall proceed in accordance with law.

73. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

74. Before parting, we wish to advert to an undesirable incident that transpired in course of hearing. On behalf of the appellants, a compilation of judgments was placed on record to which the respondents raised immediate serious objection. According to them, the compilation was replete with AI generated non-existent judgments. Advocate-on-Record for the appellants, facing the Court's query, sought to shift the entire blame on the appellants while at the same time feigning ignorance of what the compilation contained. Learned senior counsel for the appellants, in the circumstances, sought to take the blame on himself and prayed for forgiveness on behalf of the appellants. This Court had proceeded to hear the

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appeal on merits keeping the objection of the respondents (that the appellants by reason of such conduct, do not deserve a hearing on merits) open. Exemplary costs were proposed to be imposed while coming down heavily on the appellants. However, lately, this Court has been informed of the death of the first appellant. It is for such reason that the order requiring payment of costs has been deleted by "no order as to costs". Also, in view of Order XXII Rule 6, Code of Civil Procedure, 1908, the appeal did not abate and any application that may have been filed/attempted to be filed to bring to this Court's notice the death of the first appellant and substitution of his heirs being redundant stands disposed of.

.....J.
[DIPANKAR DATTA]

.....J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
OCTOBER 15, 2026.