SL. No.1

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 06.05.2025 at 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	**IA (IBC)/192/2025, IA (IBC)/1988/2023 in Company Petition (IB) No.104/7/HDB/2023**
NAME OF THE COMPANY	**GVK Energy Limited**
NAME OF THE PETITIONER(S)	**IDBI Bank Ltd**
NAME OF THE RESPONDENT(S)	**GVK Energy Limited**
UNDER SECTION	**7 OF IBC**

ORDER

Company Petition IB/104/7/2023
Orders pronounced, recorded vide separate sheets. In the result, this Petition is Allowed.

IA (IBC)/192/2025
This application is dismissed.

IA (IBC)/1988/2023
This application has become infructuous.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Apoorva

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

CP (IB) No.104/07/HDB/2023 and
IA No. 1988/2023 & IA No. 192/2025

Between:

IDBI Bank Limited,
Registered Office at IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai – 400 005 &
Branch Office at:
7th Floor, IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai – 400 005.

....Financial Creditor

And

M/s GVK Energy Limited,
Corporate Guarantor of
GVK Power (Goindwal Sahib) Ltd.,
156-159 "Paigah House",
Sardar Patel Road,
Secunderabad – 500 003.

....Corporate Guarantor

Date of Order : 06.05.2025

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For Financial Creditor : Mr Avinash Desai, Ld Senior Counsel along with Mr Dishit Bhattacharjee & Ms Swetha

For Corporate Guarantor : Mr Krish Kalra

Per : Sanjay Puri, Member (Technical)

O R D E R

1. This application, filed by IDBI Bank Ltd., the Financial Creditor (**Applicant FC**), seeks initiation of the Corporate Insolvency Resolution Process (**CIRP**)

under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**), against M/s GVK Energy Limited, the Corporate Guarantor (**Respondent CG**) of M/s GVK Power (Goindwal Sahib) Ltd (**GVK-Goindwal**), the Principal Borrower.

Application

2. The Applicant Financial Creditor had granted financial assistance to GVK-Goindwal towards its share in the consortium financing arrangement, by way of a Rupee Term Loan of Rs 733.85 crore for the purpose of setting up a coal-based thermal power plant at Goindwal Sahib, District Tarn Taran, Punjab, India. Additionally, working capital limits aggregating to Rs 153.75 crore, comprising fund-based limits, were sanctioned to meet the working capital requirements of GVK-Goindwal.

3. The Principal Borrower, GVK-Goindwal, executed various security documents, including Loan/Facility Agreements, Consortium Agreements, Deeds of Assignment, and Deeds of Hypothecation over all movable assets, and created mortgages over all immovable properties, in favour of the Financial Creditor and other consortium lenders to secure the repayment of the loan and credit facilities[1].

4. It is submitted that M/s GVK Energy Limited, the Respondent CG, acted as the Corporate Guarantor to secure the repayment of the financial assistance extended to GVK-Goindwal, and, in that capacity, executed a Deed of Corporate Guarantee[2] dated 21.07.2017.

5. It is further submitted that the Principal Borrower, GVK-Goindwal, defaulted in the repayment of its debt obligations along with interest, resulting in its account being classified as a Non-Performing Asset (NPA) by the Financial Creditor on 28.02.2018, with effect from 31.07.2016 onwards.

[1] Page 2111 to 2810 of the Application
[2] Page 2811 to 2837 of the Application

6. The Applicant FC then recalled the credit facility and thereafter issued a notice dated 08.02.2019, calling upon the Respondent CG to pay by 15.02.2019 the outstanding amounts being a sum of Rs 989.66 crores as on 31.12.2018 with further interest and charges at contractual rates.

7. GVK-Goindwal is stated to have continued to default in meeting its loan obligations, and as of 01.03.2023, it is claimed that a sum of **Rs. 1,494.94 crore** remained outstanding[3] and payable to the Applicant FC. Despite having the contractual right to demand repayment, it is asserted that the Financial Creditor has not been repaid by the Corporate Guarantor upon demand. In view of non-payment by the Respondent CG pursuant thereon, this application has been filed[4] on 11.04.2023, seeking initiation of the CIRP against the Corporate Guarantor under Section 7 of the IBC.

Counter Reply

8. In response, on behalf of the Respondent, a counter reply[5] was filed on 03.11.2023. The preliminary objection was that of bland denial of the default and the liability to pay to the FC the amount of Rs 1494.94 Crores as on 01.03.2023. Additionally, the Corporate Guarantor filed Interlocutory Applications IA No. 1988/2023 and IA No. 192/2025 (including rejoinders to the counters filed by Applicant FC), raising further objections to the Section 7 application filed by the FC. All these contentions are considered in the following paragraphs.

Limitation

9. The first principal objection raised in the counter reply is that the application, having been filed in April 2023, is barred by limitation, as the

[3] Axis Bank, one of the consortium banks, filed a Section 7 Application against the Corporate Debtor/Borrower and the same was admitted by this Tribunal vide its Order dated 10.10.2022. It is submitted that an amount of Rs. 306.02 has been realised by the FC as per the waterfall mechanism under the approved Resolution Plan of the CD, the Principal Borrower.
[4] The Application is dated 28.03.2023, whereas it was e-filed on 08.04.2023 and physical copy filed on 11.04.2023
[5] Another counter-Reply was filed on 31.10.2023, with materially same contents. The counter-reply filed later on 03.11.2023 is being considered without ignoring the earlier one.

demand for payment was made by the Financial Creditor on 08.02.2019, with a requirement to pay within seven days (i.e., by 15.02.2019).

IBC not a tool for Debt Recovery

10. Next, the Respondent has contended that the provisions of IBC are not intended to be used as a tool for debt recovery. It is asserted that an application to commence CIRP can be denied where the creditor is seeking to invoke the insolvency process as an inappropriate substitute for recovery proceedings.

11. In relation to the present proceedings, it is alleged that the application has been initiated with the intent to coerce and arm-twist the Respondent into paying sums which are neither due nor payable to the Financial Creditor. It is also submitted that, in any event, the claims of the Financial Creditor are presently under consideration in the ongoing CIRP of the Principal Borrower, GVK-Goindwal.

Resolution of GVK-Goindwal and Debt Extinction

12. Elaborating on the CIRP of GVK-Goindwal, it is asserted that on 16.12.2022, a detailed resolution plan was submitted, wherein the claims of all its Financial Creditors, including the alleged claim of the Financial Creditor herein, have been categorically dealt with. It is contended that, in view thereof, no alleged debt and/or default can be said to exist between the Financial Creditor and the Respondent herein, and accordingly, the basic ingredients of Section 7 application are not satisfied.

13. It is further claimed that once the claims of the Financial Creditor have been admitted and dealt-with under the resolution plan of the Principal Borrower, the Financial Creditor cannot seek to re-agitate the same claims against the Corporate Guarantor when the claims against the Principal Borrower are already under consideration in the said resolution plan.

14. In connected proceeding arising from an Interlocutory Application[6], the Respondent CG has placed before this Tribunal the Resolution Plan of GVK-Goindwal, approved by the Adjudicating Authority vide order[7] dated 22.12.2023. Referring to the said Resolution Plan, it is contended that, following its approval, no 'debt' and/or 'financial debt' exists in relation to the Financial Creditor, and consequently, no 'default' can be attributed to the Respondent CG. It is therefore argued that the present proceedings under Section 7 IBC are not maintainable and ought to be dismissed.

15. It is reiterated that, since the Corporate Guarantee was issued by GVK Energy to secure the debt obligations of GVK-Goindwal under the Financing Documents, the approval of the resolution plan of GVK-Goindwal has resulted in the discharge and extinguishment of the entire alleged debt. Accordingly, no payment obligation survives under the said Financing Documents, and the liability under the Corporate Guarantee Agreement also stood discharged/extinguished discharged.

16. Specific reference has been made to Clause 7.8(iii) of the resolution plan of GVK-Goindwal to contend that "all guarantees issued on behalf of the Company, i.e., the Principal Borrower, stand discharged pursuant to the approval of the resolution plan, and as such, the guarantees issued in favour of the Principal Borrower stand extinguished." In the same vein, it is further contended that "the liability of the guarantor is coextensive with that of the principal borrower, and accordingly, once the liability of the principal borrower stands extinguished and the claims of the lenders have been included and dealt with under the resolution plan, there can be no surviving liability of the Corporate Guarantor towards the Financial Creditor."

Inconsistent/Uncertain Debt Claim

17. Alluding to the demand notice dated 08.02.2019 referred to earlier, it is argued that through the said notice, the Financial Creditor had sought an amount of Rs. 989.66 crore, as against Rs. 1,494.94 crore mentioned in

[6] IA No. 192 of 2025
[7] IA NO. 1986 OF 2023 in CP No. (IB) 43/7/HDB/2020: NCLT Hyderabad Bench-1

Part IV of the present application filed under Section 7 of the IBC. Continuing with the contention regarding inconsistency in the amounts claimed, it is further submitted that, during the CIRP of GVK-Goindwal, the Financial Creditor had submitted its claim for Rs. 1,412.80 crore, as against Rs. 1,494.94 crore claimed in the present application, and that after receipt of Rs. 306.02 crore under the resolution plan, the admitted claim stood reduced to Rs. 1,106.78 crore.

18. It is also claimed that the date of default mentioned in Part IV would necessarily stand altered upon receipt of amounts under the resolution plan of GVK-Goindwal. Since no amendment application has been filed by the Financial Creditor to reflect these developments, it is contended that the present application under Section 7 is not maintainable.

Guarantee not invoked by the FC

19. Another argument raised against the maintainability of the present application is that the Corporate Guarantee was invoked by issuance of a demand notice dated 08.02.2019 by IDBI Trusteeship Services Ltd., and not by the Applicant FC. It is contended that, since no financial debt was owed to IDBI Trusteeship Services Ltd.—as no disbursement or advance of funds was made by the said entity to either GVK-Goindwal or GVK Energy—the invocation of the Corporate Guarantee was invalid. On this ground as well, it is contended that the present application under Section 7 of the IBC is untenable.

No 'Financial Debt' under IBC

20. Yet another argument advanced by the Respondent CG is that, as per the definition of "financial debt" under Section 5(8) of the IBC, a "debt" must be one "disbursed against the consideration for the time value of money." It is, therefore, contended that, since no debt was disbursed to the CG, there exists no "debt" and/or "default" attributable to the Respondent.

Vidarbha Judgement

21. Finally, the Respondent CG has placed reliance on the ***Vidarbha***[8] judgment of the Hon'ble Supreme Court to contend that, since it is a going concern and possesses sufficient assets to honour its repayment obligations, this Tribunal ought to exercise its discretion in deciding whether this is a fit case for initiation of the CIRP.

Applicant FC's Rejoinder in main CP & Counters in IAs[9]

22. The Applicant FC has responded to the contentions raised by the Respondent CG both in the rejoinder filed in the main petition and in the counter filed to Interlocutory Application IA No. 1988/2023 and IA No. 192/2025. The arguments advanced in the rejoinder and the counter are addressed below.

On Limitation

23. The Applicant FC has refuted the contention that the present application is barred by limitation under Article 137 of the Limitation Act, 1963, on the ground that it was filed more than three years after the date of cause of action. It is submitted that the application, filed on 28.03.2023, is well within the limitation period, as the date of default is 31.05.2022.

24. Notwithstanding the same, it is further submitted that even if the date of default is considered as 15.02.2019, the application would nevertheless be within limitation by virtue of the Revival Letter[10] dated 30.01.2020, wherein GVK-Goindwal, the Principal Borrower, expressly acknowledged its liability towards the indebtedness owed to the consortium of lenders, of which the Financial Creditor was a part. This Revival Letter also records a similar acknowledgment of liability by GVK Energy, the Corporate Guarantor, under the Deed of Guarantee dated 21.07.2017.

[8] Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352
[9] IA Nos. 1988/2023 & 192/2025
[10] Copy of the letter dated 30.01.2020 at Page 36 to 40 of the Rejoinder in CP(IB)/104/HYD/2023

25. In addition, reliance is placed on the ***Suo-Motu***[11] orders passed by the Hon'ble Supreme Court extending the period of limitation on account of the COVID-19 pandemic, wherein the period from 15.03.2020 to 28.02.2022 is directed to be excluded for the purposes of computing limitation. Accordingly, it is submitted that the present application, filed on 28.03.2023, remains well within the prescribed limitation period.

26. Further, reference is made to another Revival Letter[12] dated 06.07.2022, wherein both the Principal Borrower and the Corporate Guarantor have again acknowledged their liability towards the lenders' consortium, thereby precluding any question regarding limitation. It is submitted that this Revival Letter would also amount to a promise to pay a time-barred debt, thus satisfying the requirements of Section 25(3) of the Indian Contract Act, 1872.

27. It is also pointed out that the Balance Sheet of GVK-Goindwal for the financial year 2021–2022 reflects an acknowledgment of liability as on 31.03.2022 in favour of the Financial Creditor, thereby constituting a fresh acknowledgment under Section 18 of the Limitation Act, 1963. Based on this acknowledgment, it is contended that the application is not barred by limitation.

28. Furthermore, it is submitted that the Principal Borrower continued to make remittances towards the debt until September 2022. As per Section 19 of the Limitation Act, 1963, each such payment gives rise to a fresh period of limitation from the date of the corresponding payment. It is argued that the liability of the Corporate Guarantor is co-extensive with that of the Principal Borrower and that the guarantee in question is a continuing guarantee. Consequently, acknowledgments of debt and remittances made by the Principal Borrower are binding upon the Corporate Guarantor. Thus, the aforesaid acknowledgments and

[11] Suo-Motu WP (C) No. 3 of 2020: Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117
[12] Page 2959 to 2961 of the Application

remittances satisfy the conditions of Sections 18 and 19 of the Limitation Act, 1963, and are equally enforceable against the Corporate Guarantor.

On using IBC as a Tool for Debt Recovery

29. Denying the allegation that the Financial Creditor is using insolvency process as a tool of recovery, it is submitted that the Corporate Debtor "has not repaid the dues of the Financial Creditor and the Financial Creditor is rightfully exercising the rights provided by the IBC for initiating the Corporate resolution process against the Corporate Debtor". Relying on the law laid down by the Hon'ble Supreme Court in the case of ***Lalit Kumar Jain***[13], it is contended that "the liability of the Guarantor is co-extensive with the liability of the Corporate Debtor/Borrower and the Financial Creditor has the power to file claims against either or both simultaneously". Also referred to are the provisions of section 60(2) of IBC, and it is claimed that during the pendency of CIRP of the principal borrower before NCLT, "an application relating to the insolvency of the Corporate Guarantor may be filed before such NCLT". It is the position of the Applicant FC that the "Corporate Debtor without putting forward any proof, frivolously charged the Financial Creditor for defeating the spirit of IBC".

On Resolution of GVK-Goindwal and Debt Extinction

30. Rebutting the contention that, following the culmination of the CIRP of the principal borrower—wherein a resolution plan was approved by the CoC and subsequently by the NCLT—no "debt" or "financial debt" remains due to the Financial Creditor and, therefore, no "default" can be attributed to the Corporate Guarantor, the Applicant FC has submitted as follows.

31. It is argued that the Guarantee Agreement constitutes an independent contract, and the obligations of the Guarantor must be determined based on its terms. Accordingly, the Guarantor remains liable under the

[13] Lalit Kumar Jain v. Union of India, (2021) 9 SCC 321

Guarantee Agreement, irrespective of the insolvency proceedings or the Resolution Plan of the Principal Borrower.

32. It is pointed out that, under the approved Resolution Plan of the Principal Borrower, GVK-Goindwal, the Financial Creditor has recovered only Rs 306.02 crores against its admitted claim of Rs 1412.80 crores. Consequently, the FC retains the right to proceed against the CG for the unrecovered balance of Rs 1106.78 crores. It is further contended that, since the debt owed by the Principal Borrower to the Financial Creditor has not been fully discharged, a default continues to subsist, and the Respondent CG, being jointly and severally liable under the Guarantee Agreement, remains equally responsible for the outstanding amount.

33. Reference is made to Clause 6.5(ii) of the Resolution Plan in the case of GVK-Goindwal which provided that "..the settlement of Admitted Financial Debt … shall in no way affect the validity and enforceability of ….the corporate guarantees executed by third parties" and that the "Financial Creditors shall be entitled to take all steps and remedies and recourses available to them in Applicable Laws for the recovery of the unrecovered portion of their respective Admitted Financial Debt (if any) from such guarantors …under their respective guarantee". It is thus submitted that the debt against the CG does not stand extinguished, and the Financial Creditor retains the right to proceed against it for the recovery of the unrecovered dues in accordance with applicable law.

34. In support of this submission, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Essar Steel India Ltd***[14]., wherein, reaffirming its earlier decision in ***SBI v. V. Ramakrishna***[15], the Court held that a guarantor cannot evade liability by invoking the protection of Section 31 of the IBC, and that the liability of the guarantor does not stand discharged merely by virtue of the approval of a resolution plan.

[14] Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531
[15] SBI v. V. Ramakrishnan, (2018) 17 SCC 394

On Different Debt Claims

35. With respect to the differing amounts of debt, the Applicant FC submits that it had extended a Rupee Term Loan of Rs 733.85 crores and a Working Capital Loan of Rs 153.75 crores to the Principal Borrower. The Principal Borrower defaulted on repayment of the debt along with accrued interest, leading to the account being classified as a Non-Performing Asset (NPA) on 28.02.2018. Pursuant to the default, a demand letter dated 08.02.2019 was issued on behalf of the Applicant FC to the Respondent CG, calling upon it to pay a sum of Rs 989.66 crores within seven days. Thereafter, following the initiation of CIRP on 10.10.2022 against the Principal Borrower, GVK-Goindwal, a claim for the default amounting to Rs 1412.80 crores as on that date was filed. At the time of filing the present application, the outstanding amount had further increased to Rs 1494.94 crores as of 01.03.2023. Then after resolution of GVK-Goindwal where the FC realised 306.02 crores, the debt claim remaining was accordingly adjusted to the lower amount of Rs 1106.78 crores.

36. It is submitted that the difference in the amounts claimed is attributable to the delay caused by the Principal Debtor and the Corporate Guarantor in fulfilling their respective obligations. However, it is contended that for the purposes of the present application, this Tribunal is only required to ascertain whether the debt owed exceeds the minimum threshold of Rs 1 crore, which is evident from the record.

On Guarantee invoked by IDBI Trusteeship Services Ltd

37. In response to the argument that the invocation of the Corporate Guarantee by notice dated 08.02.2019 was made by IDBI Trusteeship Services Ltd. and not by the Applicant Financial Creditor, and that therefore the present application is untenable, the Applicant has drawn

attention to the SECURITY TRUSTEE AGREEMENT[16] dated 21.07.2017, executed on the same date as the Corporate Guarantee Agreement.

38. Under the said Security Trustee Agreement, IDBI Trusteeship Services Ltd. was appointed as the Security Trustee for the benefit of all lenders to GVK-Goindwal, including the Applicant FC herein. The Respondent CG had executed the Deed of Corporate Guarantee[17] in favour of IDBI Trusteeship Services Ltd., acting in its capacity as Security Trustee. It was this Corporate Guarantee that was invoked by IDBI Trusteeship Services Ltd. through its letter[18] dated 08.02.2019, acting on behalf of all lenders, including the Applicant, IDBI Bank Ltd, while clearly specifying that it was acting;

> "as security trustee for credit facility aggregating to Rs. 989.66 Crores (as on 31.12.2018) (RTL – Rs. 850.02 Crores and Working Capital Rs. 139.64 Crore) availed by GVK Power (Goindwal Sahib) Limited (the Borrowers) from IDBI Bank Limited (Lender and part of IDBI Consortium)".

39. Moreover, it is pointed out that the Deed of Corporate Guarantee executed by the Respondent CG expressly stipulates that "all obligations of the Guarantor under this Guarantee shall automatically stand extended without any further act or deed on the part of the Guarantor for the benefit of all lenders"[19], including the Applicant FC, IDBI Bank Ltd. Therefore, it is argued that not only was the notice dated 08.02.2019 issued by IDBI Trusteeship Services Ltd was in order, but the present application filed by IDBI Bank Ltd is also valid and in accordance with law.

<u>On 'Financial Debt' under IBC</u>

40. For rebutting the contention, that no debt was disbursed to the Corporate Guarantor and therefore no "debt" or "default" can be attributed to the Respondent, it is submitted that Section 60(2) of IBC expressly provides

[16] Page 2756 to 2810 of the Application
[17] Page 2811 to 2937 of the Application
[18] Page 2968 to 2970 of the Application
[19] Clause 27 of the Deed of Corporate Guarantee: Page 2834 of the Application

for the initiation of CIRP against a Corporate Guarantor. Further reliance is placed on the judgment of the Hon'ble Supreme Court in ***K. Parmasivam v. The Karur Vysya Bank Ltd***[20], wherein it was held that a financial creditor is entitled to proceed against both the principal borrower and the guarantor, jointly and severally, in the event of default. The Hon'ble Court observed that, upon such default, the guarantor assumes the status of a debtor, or if it is a corporate entity, a corporate debtor within the meaning of Section 3(8) of the IBC.

On *Vidarbha* Judgement

41. In response to the argument that, since the Respondent CG is a going concern with sufficient assets to meet its repayment obligations, this Tribunal should exercise its discretion under the ***Vidarbha*** *(supra)* judgment to determine whether initiation of CIRP is warranted, the Applicant Financial Creditor submits that such reliance is misplaced. It is pointed out that in a subsequent review petition, the Hon'ble Supreme Court clarified that the observations made in ***Vidarbha*** were specific to the facts of that particular case and must be understood in that context.

42. Further, reliance is placed on the decision of the Hon'ble Supreme Court in ***M. Suresh Reddy v. Canara Bank***[21], wherein the Court reaffirmed the settled position laid down in ***Innoventive***[22], stating that once the Adjudicating Authority is satisfied that a default has occurred, it is bound to admit the application under Section 7 of the IBC, unless it is incomplete—in which case, the applicant may be given an opportunity to rectify the defect within seven days. Thus according to the Applicant the law as laid down in ***Innoventive*** continues to hold, and the ***Vidarbha*** ruling does not dilute this settled principle in a general context, and that

[20] K. Parmasivam v. The Karur Vysya Bank Ltd : (2022) SCC Online SC 1163
[21] M. Suresh Reddy v. Canara Bank : (2023) 8 SCC 387
[22] Innoventive Industries Ltd. v. ICICI Bank : (2018) 1 SCC 407

the Respondent has not been able to show how that ruling is applicable in the present case.

Findings & Decision

43. We have heard the parties at length and perused the records, including the main Company Petition No. 104/2023, the pending Interlocutory Applications IA No. 1988/2023 and IA No. 192/2025, as well as the written submissions filed by both sides.

Outstanding Debt

44. The first issue to be settled is the outstanding debt that has remained unpaid, and for which the Respondent had stood as Guarantor for the principal borrower GVK-Goindwal. It is undeniable that GVK-Goindwal, the Principal Borrower, was extended financial assistance from time to time between 2009 and 2017 by a consortium of lenders, including the Applicant FC.

45. However, the Principal Borrower began defaulting[23] on the repayment of the loans availed from the Applicant FC, and no repayments or recoveries are reflected in the six loan accounts of GVK-Goindwal maintained with IDBI Bank after 19.09.2022, as evidenced by the bank statements[24] filed along with the Application.

46. It is also a fact that, on **08.02.2019** two letters[25] were sent by IDBI Trusteeship Services Ltd, on behalf of the Applicant FC to the Respondent CG. Both letters were about the default by the principal borrower GVK-Goindwal in making payment of **Rs 989.66 crores** comprising of Rupee Term Loan (RTL) of Rs 850.02 crores[26] and Working Capital credit facility

[23] From the bank statements annexed to the Application, it is seen that in one of the six loan accounts, Loan Account no. 1632, maintained in IDBI Bank (the Applicant) last payment was made on 21.11.2017. In other five loan accounts repayments/recoveries were made upto August-September 2022. No repayments/recoveries are seen in these loan accounts thereafter.
[24] Page 2970 to 3036 of the Application
[25] Page 2965 to 2967 and Page 2968 to 2970 of the Application
[26] Principal Amount being 733.85 crores as on 31.08.2018 which increased by 117.13 crores by the time letter dated 08.02.2019 was issued – adding to 850.02 crores

of Rs 139.64 crores. The first letter called upon the Respondent CG, in its capacity as "as the Pledgor to pay (or procure the payment) to the lender a sum of Rs 989.66 crores" due as on 31.12.2018, together with accrued interest etc amounts due along with the Trusteeship fee within 7 days. The second letter reiterated the due amount of Rs 989.66 crores and asked the Respondent CG to "pay such amount" as the principal Borrower for whom the Respondent CG had stood Guarantee had "not fulfilled its obligation…and the amount of Rs 989.66 [was] due and payable by the Guarantor on 31.12.2018 together with all amounts outstanding including interest, default interest, liquidated damages, costs, charges, expenses and all other amounts due under the aforesaid facilities till realization".

47. It is also an undisputed fact, evidenced by the **Revival Letter**[27] dated 06.07.2022 jointly issued by the Principal Borrower, GVK-Goindwal, and the Respondent CG, GVK Energy Ltd, and addressed to the Applicant FC, that as on 31.03.2022, the outstanding debt payable to the Applicant FC amounted to Rs 1379.68 crores, comprising Rs 707.00 crores[28] as principal and Rs 672.68 crores as accrued interest.

48. This principal amount of Rs 707.00 crores outstanding as on 01.03.2023 in the name of GVK-Goindwal is further certified in the Banker's Certificate[29] issued by the General Manager, IDBI Bank. With the interest amount as on 01.03.2023 standing at Rs 787.94[30] crores, brought the total dues to **Rs 1494.94 crores**. This was the amount of Rs **1494.94 crores** claimed in the Application that was filed in March/April 2023 by the Applicant FC.

49. Another relevant fact is that the Principal Borrower, GVK-Goindwal, was admitted into the CIRP on 10.10.2022, and the Applicant Financial

[27] Page 2958 to 2961 of the Application
[28] Some amounts having been repaid/recovered in the intervening period out of Rs 989.66 crores demanded earlier, as seen from the bank statements
[29] Page 2971 & 3037-8 of the Application
[30] Interest amount increased in 11 months from admitted amount of Rs 672.68 crores as on 31.03.2022 to Rs 787.94 crores as on 01.03.2023

Creditor had filed its claim for **Rs 1412.80 crores** as on that date. Pursuant to the Resolution Plan approved by the Adjudicating Authority on 22.12.2023, the Applicant Financial Creditor realised **Rs 306.02 crores**, thereby reducing its outstanding debt claim to that extent.

50. The progression of debt claims by the Applicant FC and acceptance by the Respondent CG over the years can be discerned from the following table

Date	Communication	Amount in Rs crores			
		As on	Principal	Interest	Total
08-02-2019	Notice from IDBI Trusteeship Ltd to CG	31.12.2018	989.66	Amount not specified	---
30-01-2020	First Revival Letter from CG to FC	31.03.2019	850.98*	178.31*	1029.29
06-07-2022	Second Revival Letter from CG to FC	31.03.2022	707.00*	672.68*	1379.68
10-10-2022	Claim of FC in GVK-Goindwal CIRP	10.10.2022	707.00	705.80	1412.80
28-03-2023	Debt claim in Present Application	01.03.2023	707.00	787.94	**1494.94**

*Principal Debt and Interest due as admitted by the Respondent CG

51. Accordingly, and contrary to the contentions advanced by the Respondent CG, the debt claim of Rs 1,494.94 crores (as on 01.03.2023) made in the present application is entirely consistent with the outstanding principal and interest amounts that the Respondent Corporate Guarantor has itself admitted. Even after deducting the amount of Rs 306.02 crores realised under the Resolution Plan of GVK-Goindwal, the outstanding debt claim remains well above the threshold of Rs 1 crore as prescribed under Section 4 of the IBC, thereby meeting the requirement for initiating proceedings under Section 7 of the Code.

52. In view of the foregoing findings, the argument advanced on behalf of the Respondent Corporate Guarantor—that the demand notices dated 08.02.2019 pertained to the entire outstanding debt of Rs. 989.66 crores owed to all lenders, and that the Applicant Financial Creditor, holding only a 21.6% voting share in the Committee of Creditors (CoC) of GVK Goindwal's CIRP, was entitled to merely Rs. 213.75 crores, which stood fully recovered under the resolution plan—is wholly misconceived,

misleading, and a deliberate attempt to obfuscate the core issue. Accordingly, this contention is rejected.

Limitation

53. The next issue for consideration is whether the present application under Section 7 of the IBC has been filed within the prescribed limitation period of three years, as mandated under Section 238A of the IBC read with the Limitation Act, 1963. In Part IV of the Application, the date of default is stated as 31.05.2022.

54. The Respondent, however, disputes this and seeks to treat 15.02.2019 as the date of default—being the date on which seven days expired from 08.02.2019 when the demand notice was issued by IDBI Trusteeship Services Ltd, on behalf of the Applicant Bank, seeking repayment of Rs 989.66 crores.

55. On the other hand, the Applicant has drawn attention to two revival letters issued by the Respondent Corporate Guarantor on 30.01.2020 and 06.07.2022, wherein the outstanding debt was expressly acknowledged its indebtedness, and also declared that;

> "We do hereby acknowledge for the purposes of section 18 of the Indian Limitation Act, 1963 and in order to preclude any question being raised on limitation regarding our liability to your Bank and the consortium of lenders as listed in the above table for the payment of the outstanding amounts together with interest, compound interest, additional interest, liquidated damages, costs, charges, expenses and other moneys due and payable by us to you (Consortium lenders lead by IDBI Bank) in respect of the above credit facilities granted under the above said loan documents or in any other manner and the securities created pursuant to the said security documents and other agreements and undertakings executed pursuant to the above facilities shall remain in full force."

56. Additionally, it is significant to note that the last payment credited to any of the loan accounts of the Principal Borrower was on 19.09.2022, thereby further reinforcing the Applicant's contention that the date of default could

even be reckoned from that day, insofar as the Principal Borrower is concerned, for whom the Respondent stands as the Corporate Guarantor

57. Be that as it may, considering the date of default as 31.05.2022, as stated in the application, the application e-filed on 08.04.2023 has been made within limitation period. Even if the date of default is taken as 15.02.2019, as claimed by the Respondent, the application is still within limitation period, after taking into account the extension of limitation granted by the Hon'ble Supreme Court during the COVID-19 pandemic in its Suo-motu order of 10.01.2022.

58. As per the order[31] of Hon'ble Supreme Court the period of limitation was extended in all proceedings, and it was directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation in respect of all judicial or quasi-judicial proceedings. The balance period of limitation, as per the order of the Hon'ble Supreme Court, was to become available with effect from 01.03.2022. Further, it was ordered that

> *"[in] cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply*."

59. In the present case, even if the date of default is taken as 15.02.2019, the limitation period— sans the order of the Hon'ble Supreme Court—would have expired on 14.02.2022. However, since this date falls within the exclusion period from 15.03.2020 to 28.02.2022, as directed by the Supreme Court in its Suo-motu orders relating to COVID-19, the benefit of the extended limitation period would apply.

[31] Suo-Motu WP (C) No. 3 of 2020: Cognizance for Extension of Limitation, In re, **(2022) 3 SCC 117**

60. To compute the extended limitation, it is necessary to determine the unexpired balance of the original limitation period as of 15.03.2020. From 15.02.2019 (the commencement of the limitation period as per the Respondent) to 15.03.2020, a total of 394 days had elapsed out of the statutory period of 3 year or 1095 days, leaving a balance of 701 days. In accordance with the Supreme Court's directions, this remaining period of 701 days (being longer than 90 days) recommenced from 01.03.2022, thereby extending the limitation up to 30.01.2024. Since the present application was filed well before that date, i.e., on 08.04.2023, it is clearly within the period of limitation.

61. Be that as it may, the Revival Letters dated 30.01.2020 and 06.07.2022 constitute a clear novation of debt and acknowledgment of liability, result in extending the limitation period, thereby rendering the present application dated 08.04.2023 well within time.

62. Furthermore, the covenant contained in these letters, executed by the Principal Borrower and confirmed by the Respondent CG, expressly affirms that, notwithstanding the provisions of the Limitation Act, they continue to remain liable to the Applicant for the outstanding dues—including interest, charges, and other sums—under the loan and security agreements, and that all related obligations and securities shall remain valid and in full force. This affirmation clearly amounts to a promise to pay even the time-barred debt, which as seen in earlier paras, is not.

63. Additionally, the Principal Borrower continued to disclose the outstanding debt payable to the Applicant Financial Creditor in its audited financial statements[32] for the financial years up to 2021–22. This constitutes a clear and unequivocal acknowledgment of liability by the Principal Borrower as on 31.03.2022. By necessary implication, and in view of the continuing and subsisting nature of the corporate guarantee, such acknowledgment

[32] Page 3203 to 3243 of the Application (page 3228 & 3229)

also amounts to an acknowledgment of debt by the Respondent Corporate Guarantor. This is further corroborated by the financial statements[33] of the Respondent CG for the financial year 2021-22, wherein the corporate guarantees issued on behalf of GVK Goindwal have been disclosed to the extent of Rs 6,598.47 crores.

64. Clearly, the present application e-filed on 08.04.2023 was within limitation. We reject all contentions of the Respondents in this regard.

GVK-Goindwal Resolution & Extinction of CG's Obligations

65. Another key issue for consideration is the impact of the resolution of GVK-Goindwal, the Principal Borrower, on the liability of the Respondent Corporate Guarantor (CG). Specifically, the question is whether the Corporate Guarantor is released from its obligations in respect of the unpaid debt that remains after the resolution of the Principal Borrower and the extinguishment of its pre-CIRP debts. This issue has been conclusively settled by the Hon'ble Supreme Court in ***Lalit Kumar Jain***[34] where the Court held:

> *"[Approval] of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract."*

Accordingly, the liability of the Respondent Corporate Guarantor, arising from an independent contract of guarantee, remains legally enforceable despite the resolution of the Principal Borrower. For such a guarantor, the liability is not extinguished by the mere adoption of a resolution plan for the Principal Borrower in the CIRP.

[33] Page 3178 to 3202 of the Application (page3194)
[34] Lalit Kumar Jain v. Union of India [(2021) 9 SCC 321

66. The Respondent CG, however, places reliance on specific clauses of the resolution plan of GVK-Goindwal to assert that its liability stands expressly extinguished under the said plan. It is contended that the Committee of Creditors (CoC)—of which the Applicant Financial Creditor (FC) was a part—and the Adjudicating Authority both approved the resolution plan, including provisions that allegedly discharged the CG from further liability. In particular, Clause 7.8 (iii) of the resolution plan is cited, which purportedly provides that:

> **7.8. Treatment of Stakeholders and Other Creditors**
>
> (iii) Any invocation or appropriation or other enforcement action already undertaken in respect of any security, guarantee, personal guarantee, corporate guarantee, letter of credit, letter of undertaking, letter of comfort, pledge, charge, encumbrance, hypothecation or collateral provided in connection with any other debt or obligation of the Company (**other than any guarantee or security forming part of the Third Party Security**) at any time prior to the acquisition of the control by the Resolution Applicant over the Company pursuant to this Resolution Plan, shall be automatically revoked and cancelled and deemed null and void and all liabilities and obligations in relation to such security, guarantee, personal guarantee, corporate guarantee, letter of credit, letter of undertaking, letter of comfort, pledge, charge, encumbrance hypothecation or collateral shall be deemed to have been permanently extinguished on the approval of this Resolution Plan by NCLT.

67. In the context of the present case, the above clause only implies that any invocation of a corporate guarantee issued in respect of debts of the Company (i.e., GVK-Goindwal), excluding those forming part of the Third Party Security, prior to the Resolution Applicant acquiring control of the Company under the Resolution Plan, shall stand automatically revoked and cancelled, and the corresponding obligations shall be deemed permanently extinguished upon the approval of the Resolution Plan by the NCLT.

68. However, this clause explicitly carves out guarantees or securities forming part of the 'Third Party Security', which is defined in **Clause 6.5(ii)** of the Resolution Plan, which states:

6.5. Settlement of Financial Debt

(ii) All the rights, interest, title and benefit of each Financial Creditor in relation to its share in the Admitted Financial Debt under the existing financing documents shall stand settled by each such Financial Creditor in favour of the Company, along with all security interest in respect of the Admitted Financial Debt for the benefit of the Financial Creditor or any other person claiming under or through such Financial Creditor (whether by virtue of any contractual arrangement with such Financial Creditor or otherwise), absolutely and forever to the end and intent that the Company shall thereafter be deemed to be the full and absolute owner thereof and legally and beneficially entitled to such security interest in their own name and right. It is clarified that such settlement shall be done in compliance with Applicable Laws. For the avoidance of doubt, it is clarified that the **settlement of the Admitted Financial Debt** by payment of the DFC Payment, the Settlement Consideration and Surplus Cash **shall in no way affect the validity and enforceability of** any personal guarantees executed by persons in the existing promoter group, **the corporate guarantees executed by third parties**, and any other security created by a third party ("**Third Party Security**"). **The Financial Creditors shall be entitled to take all steps and remedies and recourses available to them in Applicable Laws for the recovery of the unrecovered portion of their respective Admitted Financial Debt (if any) from such guarantors and/or third-party security providers, under their respective guarantee and/or security documents.** Further, notwithstanding any other provision of this Resolution Plan, only to the extent of the Admitted Financial Debt not recovered by the Financial Creditors under this. Resolution Plan, the Resolution Applicant relinquishes its right to pursue any Third Party Security in favour of the Financial Creditors, and accordingly, **the rights of the Financial Creditors under such Third Party Security shall continue to subsist with respect to the entirety of the Admitted Financial Debt not recovered by the Financial Creditors under this Resolution Plan**. It is hereby clarified that there is no relinquishment of right by the Resolution Applicant to pursue any Third Party Security in favour of the Financial Creditors beyond the unrecovered portion of the Admitted Financial Debt, if any, under the Resolution Plan. *(emphasis supplied)*

69. In the present context, the relevant portion of Clause 6.5(ii) states that: **"... the settlement of the Admitted Financial Debt ... shall in no way affect the validity and enforceability of ... the corporate guarantees executed by third parties ...**." It further affirms that Financial Creditors may pursue remedies under applicable law to recover unrecovered dues from such guarantors under their respective guarantee agreements.

70. A combined reading of Clauses 7.8(iii) and 6.5(ii) of the Resolution Plan makes it evident that the liability of the Corporate Guarantor under the guarantee agreement does not stand extinguished upon approval of the resolution plan by the NCLT. On the contrary, the plan expressly preserves the rights of the Financial Creditors to enforce third-party corporate guarantees for any unrecovered portion of the admitted debt. Therefore, the arguments advanced on behalf of the Respondent CG, claiming that its obligations stand discharged under the resolution plan, are devoid of merit and are hereby rejected.

Guarantee invoked by IDBI Trusteeship Services Ltd, and Application by IDBI Bank Ltd

71. A contention was raised on behalf of the Respondent Corporate Guarantor (CG) regarding the demand notice dated 08.02.2019 issued by IDBI Trusteeship Services Ltd. It was argued that the said notice was not issued by the Applicant FC, but by IDBI Trusteeship Services Ltd on behalf of the entire consortium of lenders, and therefore, the present application—being based on the default arising from that demand notice—is not maintainable. It was also argued that since no financial debt was owed to IDBI Trusteeship Services Ltd.—as no disbursement or advance of funds was made by the said entity to either GVK-Goindwal or GVK Energy—the invocation of the Corporate Guarantee was invalid.

72. Another related argument advanced on behalf of the Respondent Corporate Guarantor is that the present application filed by IDBI Bank Ltd. is defective, as the guarantee agreement was executed between the Respondent CG and IDBI Trusteeship Services Ltd., and not with IDBI Bank Ltd., the Applicant herein.

73. We have already taken note of the response submitted by the Applicant Financial Creditor (FC) on this issue and are in agreement with the same. In view of the agreements executed on 21.07.2017 between the Applicant FC (as a member of the lenders' consortium), the Principal Borrower, and

the Respondent CG, we find that the contentions raised by the Respondent CG are devoid of substance and appear to have been made solely to protract the proceedings without just cause. Our reasons are as follows:

74. Firstly, pursuant to the **Security Trustee Agreement**[35], IDBI Trusteeship Services Ltd. was appointed as the Security Trustee for the benefit of all lenders to GVK-Goindwal, including the Applicant Financial Creditor. The Respondent CG had executed the Deed of Corporate Guarantee in favour of IDBI Trusteeship Services Ltd. in its capacity as Security Trustee. It was under this Guarantee that IDBI Trusteeship Services Ltd., acting on behalf of all consortium lenders including the Applicant, IDBI Bank Ltd., invoked the guarantee by issuing the letters[36] dated 08.02.2019.

75. Accordingly, when IDBI Trusteeship invoked the Corporate Guarantee by issuing letters dated 08.02.2019, it was acting on behalf of the Applicant FC, IDBI Bank Ltd., which is also evident from the language of these letters addressed to the Respondent CG.

- The first letter, bearing reference No. 11098/ITSL/OPR/2018-19, informed the Respondent Corporate Guarantor (CG) of the default committed by the Principal Borrower and its obligation to repay the outstanding dues amounting to Rs. 989.66 crores.

- The second letter, bearing the next reference No. 11099/ITSL/OPR/2018-19 and issued on the same day, was more specific in identifying the payee of the said outstanding amount—namely, M/s IDBI Bank Ltd., a lender forming part of the IDBI Consortium, and the Applicant FC in the present proceedings. It clearly stated that:

> "We act as security trustee for credit facility aggregating to **Rs. 989.66 Crores** (as on 31.12.2018) (RTL – Rs. 850.02 Crores and Working Capital Rs. 139.64 Crore)

[35] Page 2756 to 2810 of the Application
[36] Page 2965 to 2970 of the Application

> **availed by GVK Power (Goindwal Sahib) Limited** (the Borrowers) **from IDBI Bank Limited** (Lender and part of IDBI Consortium)" (emphasis supplied)

76. In light of the contractual covenants agreed between the parties, we find no infirmity in the actions of IDBI Trusteeship Services Ltd. in issuing the demand letters on behalf of the Applicant FC. The invocation of the Corporate Guarantee, following the Principal Borrower's default was fully in accordance with the law and the agreements executed by the parties.

77. Next, the **Deed of Corporate Guarantee**[37] of 21.07.2017 executed between IDBI Trusteeship Services Ltd and the Respondent CG expressly provides in **clause 27** for the "**AUTOMATIC EXTENSION OF GUARANTEE TO ACCEDING LENDERS UNDER THE RUPEE FACILITY AGREEMENT/ WORKING CAPITAL CONSORTIUM AGREEMENT**". This clause stipulated, that:

> The Guarantor agrees that the guarantees, other undertakings and all obligations of the Guarantor under this Guarantee shall automatically stand extended without any further act or deed on the part of the Quarantor for the benefit of all lenders (a) extending financial assistance to the Borrower under the Rupee Facility Agreement; (b) extending financial assistance to the Borrower under the Working Capital Consortium Agreement; (c) upon execution of the Deed of Accession to the Working Capital Consortium Agreement; and (d) upon execution of the Deed of Accession to the Rupee Facility Agreement.

Accordingly, the Respondent CG expressly agreed that all of its obligations under the guarantee agreement in favour of IDBI Trusteeship Services Ltd would automatically extend to the consortium of lenders, including the Applicant Financial Creditor, without any further act or deed required on its part, and shall enure to the benefit of all lenders, including the Applicant FC, IDBI Bank Ltd.

78. Therefore, the filing of the present application by the Applicant FC cannot be faulted merely on the ground that the earlier demand notice was issued

[37] Page 2811 to 2837 of the Application (Page 2834)

by IDBI Trusteeship Services Ltd. The said notice was issued pursuant to the Security Trustee Agreement dated 21.07.2017, under which IDBI Trusteeship Services Ltd was authorised to act on behalf of all lenders. The Clause 27 of the Deed of Corporate Guarantee thereafter expressly enabled the automatic extension of the guarantee to all acceding lenders, thereby conferring upon them the right to invoke and enforce the guarantee in the event of default by the Principal Borrower.

'Financial Debt' attributable to the CG

79. The Respondent CG has raised a contention that, in terms of the definition of "financial debt" under Section 5(8) of the Insolvency and Bankruptcy Code (IBC), a debt must be one "disbursed against the consideration for the time value of money," and since no funds were disbursed directly to the CG, there exists no "debt" or "default" attributable to it. This contention is entirely misconceived and devoid of merit.

80. Acceptance of such an argument would render several provisions of the IBC, particularly those relating to guarantors, wholly otiose. Notably, Section 60(2) of the Code—which confers jurisdiction on the Adjudicating Authority to entertain insolvency proceedings against a corporate guarantor where proceedings are pending against the principal borrower—would be rendered redundant. In cases where the financial debt is disbursed to the principal borrower, and the corporate or personal guarantor undertakes an independent obligation to repay in the event of default, the interpretation advanced by the Respondent CG would defeat the very object and purpose of including guarantors within the IBC framework.

81. Section 5(8)(i) of the Code addresses this precise situation, when it expressly includes within the definition of "financial debt" the liability in respect of any guarantee or indemnity provided for the debts referred to in sub-clauses (a) to (h). The provision reads as follows:

> "*a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes –*
>
> *…*
>
> *(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause*".

Accordingly, the liability of a guarantor clearly falls within the ambit of a financial debt under the Code.

82. The judgment of the Hon'ble Supreme Court in ***K. Parmasivam v. The Karur Vysya* Bank *Ltd*[38]**, as relied upon by the Applicant FC, is squarely applicable, where the Court took a view that a financial creditor is entitled to proceed against both the principal borrower and the guarantor, jointly and severally, in the event of a default, as upon such default, the guarantor assumes the status of a debtor, and if the guarantor is a corporate entity, it assumes the status of a "corporate debtor" within the meaning of Section 3(8) of the IBC. Relying on the three judges' decision in ***Laxmi Pat Surana***[39], the Hon'ble Court quoted therefrom:

> *"Section 7 is an enabling provision, which permits the financial creditor to initiate CIRP against a corporate debtor. The corporate debtor can be the principal borrower. It can also be a corporate person assuming the status of corporate debtor having offered guarantee, if and when the principal borrower/ debtor (be it a corporate person or otherwise) commits default in payment of its debt."*
>
> *"Indubitably, a right or cause of action would enure to the lender (financial creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally. It would still be a case of default committed by the guarantor itself, if and when the principal borrower fails to discharge his obligation in respect of amount of debt. For, the obligation of the guarantor is coextensive and coterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the guarantor metamorphoses into a*

[38] K. Parmasivam v. The Karur Vysya Bank Ltd : (2022) SCC OnLine SC 1163
[39] Laxmi Pat Surana v. Union Bank of India, (2021) 8 SCC 481

> *debtor or a corporate debtor if it happens to be a corporate person, within the meaning of Section 3(8) IBC. For, as aforesaid, the expression "default" has also been defined in Section 3(12) of IBC to mean non-payment of debt when whole or any part or instalment of the amount of debt has become due or payable and is not paid by the debtor or the corporate debtor, as the case may be."*

and concluded that the liability of the guarantor is co-extensive with that of the Principal Borrower. We follow accordingly.

***Vidarbha* Judgement**

83. In another submission, though lacking in merit, the Respondent CG has relied upon the ***Vidarbha*** *(supra)* judgment of the Hon'ble Supreme Court to contend that, since it is a going concern and possesses sufficient assets to meet its repayment obligations, this Tribunal ought to exercise its discretion in determining whether the present case warrants initiation of the Corporate Insolvency Resolution Process (CIRP).

84. The reliance placed by the Respondent CG on ***Vidarbha*** judgement is wholly misplaced and inapplicable to the facts of the present case. The *Vidarbha* decision was rendered in a specific factual context, where the financial creditor's claim was sub judice in appeal and the Court held that the Adjudicating Authority could exercise discretion in admitting a Section 7 application, particularly where there were exceptional and compelling circumstances.

85. Hon'ble Supreme Court has since clarified the limited applicability of *Vidarbha*. In its order passed in the ***Axis Bank Review Petition***[40], the Court observed that its earlier conclusions were made in the factual setting of that particular case and do not constitute a general principle enabling corporate debtors or guarantors to avoid the rigour of Section 7 of the IBC merely on the ground that they are solvent or are a going concern.

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

86. Moreover, the law laid down in ***Innoventive***[41] continues to govern the admission of applications under Section 7. It was categorically held therein that once the Adjudicating Authority is satisfied that a "default" has occurred, the application must be admitted unless it is incomplete. The financial health of the debtor or guarantor is not a relevant consideration at this stage. This principle was reiterated by the Hon'ble Supreme Court in ***M. Suresh Kumar Reddy***[42], which also emphasized that "*once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7*".

87. In the present case, the occurrence of default is undisputed, as is the liability of the Respondent CG under a binding contract of guarantee. The invocation of *Vidarbha* is, therefore, no more than a last-ditch attempt to stall proceedings and does not merit consideration.

Application of Section 10A

88. A contention was also raised on behalf of the Respondent CG regarding the applicability of Section 10A of the IBC. It was argued that the Applicant FC has claimed interest and penal interest, and that each tranche of such interest becoming due constitutes a "default" within the meaning of Section 3(12) of the Code. Accordingly, it was submitted that any default arising from interest or penal interest that became due during the period from March 2020 to March 2021 would fall within the exclusion period under Section 10A, thereby rendering the present application under Section 7 of the Code barred by the embargo imposed under that provision.

89. In response, the Applicant FC has submitted that the date of default, as stated in the application, is 31.05.2022, and hence the bar under Section 10A of the IBC is not attracted. It is further contended that, even assuming the date of default to be 15.02.2019, as alleged by the Respondent CG, the application would still fall outside the scope of Section 10A.

[41] Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407
[42] M. Suresh Kumar Reddy v. Canara Bank (2023) SCC OnLine SC 801

90. We concur with the submission of the Applicant FC. The present application is not hit by the embargo under Section 10A of the IBC. Even if one were to consider 08.02.2019—the date on which the corporate guarantee was invoked on behalf of the Applicant FC—and 15.02.2019 as the date on which the Respondent CG failed to discharge its obligations under the guarantee agreement, the default clearly occurred prior to 25.03.2020, the effective commencement date of the Section 10A bar. Accordingly, Section 10A has no application to the facts of the present case.

Receipts of Rs 49.83 Crores and Rs 88.83 crores

91. The Respondent Corporate Guarantor (CG) has alleged that the Applicant Financial Creditor (FC) suppressed certain receipts of the Principal Borrower, specifically amounts of Rs. 49.83 crores and Rs. 88.82 crores. The Applicant has duly responded to these allegations and provided its explanation regarding the said amounts. Upon consideration, we find the accusation of suppression to be entirely baseless and without merit.

92. So far as the amount of Rs 49.83 crores is concerned, this amount was a compensation awarded to GVK Coal Tokisud Pvt. Ltd., a company incorporated for the development of the 'Tokisud Coal Block' allotted by the Ministry of Coal to the Principal Borrower. Following the Hon'ble Supreme Court's cancellation of coal block allotments in August 2014, GVK Coal Tokisud Pvt. Ltd. claimed compensation under the Coal Mines (Special Provisions) Act, 2015. Pursuant to an order of the Nominated Authority dated 16.03.2022, the compensation amount of Rs. 49.83 crore was deposited into the company's TRA account with IDBI Bank, Hyderabad, on 26.04.2022.

93. Therefore, the amounts were received by GVK Coal Tokisud Pvt. Ltd. and only the TRA account is being maintained by the Financial Creditor in Mumbai Branch. The Financial Creditor has not received any amounts

towards the present debt from the above received amount. Accordingly, the allegation of suppression is without basis and liable to be rejected.

94. As regards the sum of Rs. 88.83 crores, it represents an amount directed to be deposited into the account of the Respondent Corporate Guarantor under the same order of the Nominated Authority. However, this direction has been challenged by IDBI Bank, Hyderabad Branch—a Financial Creditor—by way of Writ Petition No. 5940/2022 before the High Court of Delhi, in view of the debt disbursed to GVK Coal Tokisud Pvt. Ltd. Pursuant to the writ proceedings, the said amount of Rs. 88.83 crores has been deposited with the Registry of the High Court and remains subject to judicial determination. No part of this amount has been received by the Applicant FC towards outstanding debt, and hence, the allegation of suppression is equally misconceived.

IA No. 1988/2023 and IA No. 192/2025

95. During the pendency of the present application under Section 7 of IBC, Interlocutory Applications (IA) No. 1988 of 2023 and No. 192 of 2025 were filed by the Respondent Corporate Guarantor.

96. IA No. 1988 of 2023 sought the dismissal of the main Company Petition on the ground that a CIRP was already pending in respect of GVK-Goindwal. In the alternative, the Respondent prayed that the Section 7 proceedings be kept in abeyance until the outcome of the CIRP of GVK-Goindwal. Since the CIRP of GVK-Goindwal has since been concluded, with the resolution plan having been approved on 20.12.2023, and the implications thereof have already been discussed in detail in this order, this IA has now become infructuous and is accordingly disposed of.

97. So far as IA No. 192 of 2025 is concerned, it primarily relates to the resolution plan in the CIRP of GVK-Goindwal and its alleged impact on the present application under Section 7 of the IBC. Since this issue has already been discussed at length in this order, and the contentions raised

therein have been found to be without merit, this application is dismissed and stands disposed of accordingly.

Conclusion

98. The default by the Principal Borrower, GVK-Goindwal is evident, as it underwent the Corporate Insolvency Resolution Process (CIRP). That certain debts remained unpaid despite the resolution of the GVK-Goindwal is also an admitted fact. The liability of the Respondent CG under the corporate guarantee is equally clear, as the Corporate Guarantor steps into the shoes of the debtor upon the Principal Borrower's failure to repay its dues, regardless of the Principal Borrower's separate resolution under CIRP. The fact that a financial debt exceeding Rs. 1 crore remains unpaid is beyond dispute.

99. In view of the above, the present application for initiation of CIRP against the Respondent CG—having been filed well within the prescribed limitation period and not barred by Section 10A of the IBC—is found to be maintainable and is accordingly admitted.

ORDER

a) The Application is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.

b) The Applicant has proposed the name of Mr Venkata Chalam Varanasi as the Interim Resolution Professional (**IRP**), whose Authorization for Assignment (**AFA**) as per the IBBI website is valid up to 31.12.2025. The proposal to appoint **Mr Venkata Chalam Varanasi[43] as IRP is**

[43] Registration Number: IBBI/IPA-002/IP-N00267/2017-18/10780, R/o. 12-13-205, Street No. 2, Tarnaka, Secunderabad, Telangana - 500017, E-mail ID : vaaranasivkchalam@gmail.com, Mobile No. 8897784174.

approved. The IRP is directed to file AFA within three days from the date of this order.

c) The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.

d) Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:

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 or 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 rights 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

v. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession,

clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

e) The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

f) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2106. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the Code, 2016.

g) The Corporate Applicant as well as the Registry is directed to send the copy of this Order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.

h) The Registry is directed to communicate this Order to the Corporate Applicant.

i) The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.

Accordingly, this Company Petition is allowed.

(SANJAY PURI)
MEMBER (TECHNICAL)

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)