

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**

C.P. (IB) 517/MB/2023

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

In the matter of

**National Asset Reconstruction
Company Limited
(Acting in its capacity as a trustee of
NARCL Trust - 0021)**

Having its registered address at:

8th Floor, Birla Centurion Unit No. 1,
794, Pandurang Budhkar Marg, Worli,
Mumbai - 400030

... Petitioner/ Financial Creditor

Versus

**Ludhiana Talwandi Toll Roads Private
Limited**

[CIN: U45203MH2010PTC211120]

(Formerly known as:

Essel Ludhiana Talwandi Toll Roads
Private Limited)

Having Registered Office at:

513/A, 5th Floor, Kohinoor City,
Kiroli Road, L.B.S. Marg,
Off Bandra Kurla Complex,
Kurla (West), Mumbai – 400 070.



And

Having Office address(s) at:
135, Continental Building,
Dr. Annir Beasant Road,
Worli, Mumbai – 400 018.

And

A-Wing, 20th Floor, Marathon Futurex,
N.M. Joshi Marg, Lower Parel,
Mumbai – 400 013.

... Respondent/ Corporate Debtor

Order Pronounced on: 19.06.2025

Coram:

Smt. Lakshmi Gurung, Hon'ble Member (Judicial)

Shri Hariharan Neelakanta Iyer, Hon'ble Member (Technical)

Appearances:

For Financial Creditor: Counsel Rohit Gupta a/w Adv. Madhura
Kulkarni, Adv. Jinal Shah, Ronit Chopra and
Zainab Shaikh i/b Juris Corp for Petitioner

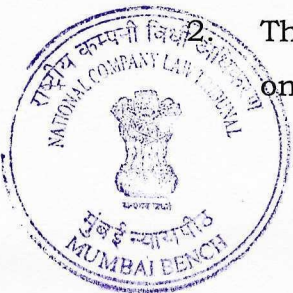
For Corporate Debtor: None present.

Per: SMT. LAKSHMI GURUNG, HON'BLE MEMBER (JUDICIAL)

1. The present Company Petition (IB) – 517(MB)/2023 is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**IBC**'/ '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process ('**CIRP**') against Ludhiana Talwandi Toll Roads Private Limited ('**Corporate Debtor**').

Shorn of unnecessary details, brief relevant facts are:

The Corporate Debtor was incorporated as a private limited company on 20.12.2010. It was formed as a '*Special Purpose Vehicle*' for the



primary purpose of design, construction, development, operation, maintenance, management, and toll collection. The promoters of the Corporate Debtor are (i) Essel Infra Projects Limited (with 76% share) and (ii) PAN India Network Limited (with 24% share).

3. National Highways Authority of India (**'NHAI'**), executed a Concession Agreement dated 20.01.2011 with the Corporate Debtor, for a period of twenty-nine (29) years, for four-laning of the Ludhiana to Talwandi section of NH 95, in the State of Punjab, as Public Private Partnership on Design, Build, Finance, Operate and Transfer basis (**'the Project'**).
4. To finance the said Project, the Corporate Debtor entered into a **'Common Loan Agreement'** dated 19.07.2011 with Punjab National Bank (**'PNB'**) as lenders' agent in order to part-finance the Project for an amount not exceeding Rs. 500 Crores.
5. Thereafter, a Novation Deed dated 27.03.2012 was executed duly signed by existing lender, new lenders and the borrower wherein existing lender was referred to as PNB and following lenders were collectively referred to as **'New Lenders'**: -
 - a. Indian Overseas Bank
 - b. Canara Bank
 - c. Central Bank of India
 - d. Dena Bank
 - e. India Infrastructure Finance Company Limited
6. Vide letter 21.09.2011, Canara Bank sanctioned Rupee Term Loan for Rs. 50 Crores with repayment clause of 56 unequal quarterly installments starting from 30.09.2015 and ending on 30.06.2029 as per the table mentioned in the sanction letter. Later, Canara Bank vide letter dated 16.08.2012 the sanction letter was modified w.e.f 26.05.2012 for an amount of Rs. 40 Crores and rate of interest was aligned with base rate of PNB to have uniformity under consortium agreement. All other existing terms and conditions as per sanction letter



dated 21.09.2011, remained unchanged, which was duly accepted by the corporate debtor vide letter dated 04.04.2012. Copy of the sanction letter dated 21.09.2011, modification letter dated 16.08.2012 and acceptance letter issued by the corporate debtor are annexed as **Annexure - 5 (Collectively)** to the petition respectively.

7. Canara Bank disbursed an amount of Rs. 38,56,00,000/- (Rupees Thirty-Eight Crores Fifty-Six Lakhs Only) during the period 29.03.2012 to 29.02.2016. Copy of the Statement of Accounts from 29.03.2012 to 28.02.2023 is annexed as **Annexure 'A-7'** to the petition. The petitioner has also annexed Certificate in terms of Section 2A (a), (b) & (c) of The Bankers' Books Evidence Act, 1891.
8. The Common Loan Agreement was agreed basis the Scheduled Commercial Operation Date (**'SCOD'**) of 16.01.2014 or Commercial Operation Date, whichever is earlier. The parties to the common loan agreement agreed to extend the SCOD due to slow progress in completion of the said Project on various accounts and rescheduled the amortization schedule several times. Accordingly, amendments in common loan agreement and consequential revised sanctioned memorandum with extended SCOD were executed as follows:
 - a. Second amendment to common loan agreement dated 30.03.2017 and the sanction memorandum dated 26.04.2017 is annexed as **Annexure - 'A-18' (Collectively)** to the petition.
 - b. Third amendment to common loan agreement dated 14.09.2017 and the sanction memorandum dated 27.09.2017 is annexed as **Annexure - 'A-19' (Collectively)** to the petition.
 - c. Fourth amendment to common loan agreement dated 14.06.2018 is annexed as **Annexure - 'A-21'** to the petition. As per the fourth amendment agreement, the first instalment was payable by corporate debtor on **31.03.2019**.



9. The account of the corporate debtor was classified as Non-Performing Asset (**'NPA'**) on 20.09.2018 for default amount of Rs. 37,85,27,757/-. The Reserve Bank of India downgraded the account as loss asset with retrospective effect from 22.09.2016 as a case of failed restructuring (as extended SCOD was not achieved).
10. As on 31.03.2023, the total amount in default as per Part-IV of the petition is Rs. 62,00,74,829/- (inclusive principle and interest amount).
11. **Acknowledgment of Debt**
Corporate Debtor addressed a letter dated 07.02.2020 to PNB, acknowledging its liability under the common loan agreement as amended from time to time and other agreements for payments of all outstanding dues payable by the corporate debtor. Copy of letter dated 07.02.2020 is attached as **Annexure - 'A9'** to the petition.
12. **Assignment of Debt**
The Canara Bank, by way of an Assignment Deed dated 28.06.2024, assigned its debt in favor of the National Asset Reconstruction Company Limited (**'NARCL'**), pursuant to which the substitution of the financial creditor to the company petition was allowed by this Tribunal vide order dated 12.12.2024 and service was again effected on the corporate debtor by NARCL vide email dated 05.02.2025 and Affidavit-of-Service dated 11.02.2025 was filed by NARCL on 11.03.2025.
13. The service was effected on the corporate debtor by Canara Bank on 05.05.2025. However, after allowing substitution of the Petitioner, the corporate debtor was again served by speed post on 24.03.2025 and also through email on 28.03.2025. Despite service and multiple opportunities, the Corporate Debtor failed to file any reply or make any representation before this Tribunal. Thus the facts mentioned in the petition are un rebutted.



Findings

14. Heard Ld. Counsel for the Petitioner and perused the voluminous documents placed on record.
15. Apart from the documents to prove the loan facility and disbursement by Canara Bank, NARCL has filed on 21.02.2025 vide Diary No. 2709138038242023, additional documents duly attested by the Counsel dated 13.02.2025, placing on record Audited Balance Sheet of Corporate Debtor for F.Y. 2021-2022 and 10.02.2024 for Audited Balance Sheet of F.Y. 2022-2023.
16. As per note no. 13 of the Audited Balance Sheet as on 31.03.2023, Non-Current Borrowings is Rs. 55,81,160,000. Clause No. (i) mentions the names of the lenders which includes Canara Bank. This is a clear acknowledgement of liabilities by corporate debtor towards lenders including the Canara Bank.

17. Record of Default

The original Petitioner has placed on record the Form D (**Record of Default**) issued by National E-Governance Services Limited (**'NeSL'**) dated 17.02.2023 which shows Default Amount as Rs. 60,63,92,968.71 and date of default as 31.03.2019 The Record of Default dated 17.02.2023 issued by NeSL is annexed as **Annexure - 'A-14'**.

18. Bankers' Books Evidence

The Petitioner has also placed on record certificate under section 2A(a), (b) and (c) of Bankers' Books Evidence Act, 1891. The said certificate is annexed as **Annexure - 'A-23'**.

19. Deed of Assignment

The Deed of Assignment dated 28.06.2024 has been executed by Canara Bank in favour of the NARCL assigning the loan facility granted to the corporate debtor and has been duly registered. Thus, NARCL



enters into the shoes of Canara Bank for the purpose of determining debt and default.

20. For a company petition to be admitted under section 7 of the Code, following key essential elements must be met:

- i. Existence of Debt: There must be a verifiable debt.
- ii. Default: The corporate debtor must have defaulted in repayment of debt as per the terms of the applicable loan agreement
- iii. Within limitation period: The company petition must be filed in accordance with Article 137 of the Limitation Act, 1963.
- iv. Beyond Threshold limit

21. The common loan agreements, sanction letter by Canara Bank, various amendment agreements, certificate of registration of mortgage, banks ledger account are sufficient evidence to prove the debt.

22. The factum of declaration of the account of the corporate debtor as NPA is unrebutted and even confirmed by Reserve Bank of India which down graded the account of the corporate debtor, goes to prove the default.

23. As per sub-section 3 of section 7 of the Code, the financial creditor shall file record of default recorded with the information utility or such other record or evidence of default as may be specified.

24. Regulation 2A of IBBI (Corporate Insolvency Resolution Process) Regulations, 2016 specifies evidence of default as follows:

2-A. Record or evidence of default by financial creditor—

For the purposes of clause (a) of sub-section (3) of Section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely—

- a. *certified copy of entries in the relevant account in the bankers book as defined in clause (3) of Section 2 of the Bankers Books Evidence Act, 1891 (18 of 1891);*



b. an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.

25. It has been held by the Hon'ble National Company Law Appellate Tribunal in **Vipul Himatlal Shah versus Teco Industries, Company Appeal (AT)(Ins.) No. 70 of 2022**, decided on 18.05.2022 that the record of default issued by information utility (NeSL) serves as sufficient evidence for concluding the disbursed debt amount and any default in its payment. The relevant extract of the said judgment is reproduced as under: -

“xxx

16. it is clear that in case the record of Information Utility shows that there is a debt which is in default, the Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility, moreso when the record of the Information Utility is deemed authenticated and no dispute or refutation of said record has been done by the corporate debtor earlier.

xxx”

26. The petitioner has annexed the Certificate of Record of Default issued by NeSL dated 17.02.2023, showing the amount of default is Rs. 62,00,74,829/- (Rupees Sixty-Two Crores and Seventy-Four Thousand and Eight-Hundred Twenty-Nine Only/-), including interest payable thereon as of 31.03.2023, which is deemed to be authenticated and no dispute or refutation of the said record has been done by the corporate debtor.

27. The petitioner has also annexed Certificate under Bankers' Books Evidence Act, 1891, which is mentioned as one of the evidences under Regulation 2A of IBBI (Corporate Insolvency Resolution Process) Regulations, 2016, for the purpose of section 7(3)(a) of the Code.

28. In view of the various loan agreements annexed to the petition, Record of Default issued by NeSL and Statement of Account of the Corporate Debtor in the record of Canara Bank as per Bankers' Books Evidence



Act, 1891. We come to irresistible and inescapable conclusion that the Petitioner has established the debt and default.

29. As per part IV of the petition, the date of default is 20.09.2018 which is the date of declaration of the corporate debtor's account as NPA. Further, there are acknowledgments of debt by the corporate debtor by letter dated 07.02.2020 and its audited balance sheets for the F.Y. 2021-2022 and F.Y. 2022-2023. These acknowledgements are within three years of date of default providing fresh period of limitation from each date the debt is acknowledged by the corporate debtor. Thus the petition filed on 29.04.2023 is well within the period of limitation.
30. The amount of debt exceeds the threshold limit of Rs. One Crore, which is an undisputed position.
31. Further, it is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under Section 7 of the Code must be admitted unless it lacks other necessities as mandated thereunder. We are supported by the decision of Hon'ble Supreme Court in **Innovative Industries Limited vs. ICICI Bank and Anr, (2018) 1 SCC 407**, wherein it was held as follows:

"

xxx

28. ... *The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days' receipt of a notice from the adjudicating authority.*

...

30.*On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, 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. It is of no matter that the debt is disputed so long as the debt is "due" i.e. Payable unless interdicted by some law or has not yet*



*become due in the sense that it is payable at some future date.
It is only when this is proved to the satisfaction of the
adjudicating authority that the adjudicating authority may
reject an application and not otherwise.*

xxx”

32. Given the facts and circumstances of the case and discussions hereinabove, the debt and default have been established by the petitioner successfully and further the petition under Section 7 of the IBC is filed within the period of limitation period and the default amount is in excess of Rs. One (1) Crore. Therefore, the Company Petition (IB)/517(MB)/2023 is admitted and ordered as follows:

ORDER

- i. The petition bearing CP (IB) – 517(MB)/2023 is admitted.
- ii. This bench considering, the written communication dated 27.02.2023 hereby appoints **Mr. Vikram Kumar, Registration** No. IBBI/IPA-001/IP-P00082/2017-2018/10178 as the Interim Resolution Professional (‘IRP’) having e-mail vikramau@gmail.com to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016. The Written Communication is accompanied by Authorization for Assignment (‘AFA’) which is found valid up to 31.12.2025.
- iii. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;



- c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor
- iv. Notwithstanding the above, during the period of moratorium:
- a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - b. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- v. The order of moratorium shall have effect from the date of pronouncement of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of section 31 or passes an order for Liquidation of Corporate Debtor under section 33, as the case may be.
- vi. The public announcement of the Corporate Insolvency Resolution process shall be made immediately as specified under section 13 of the Code.
- vii. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of Section 17 of the Code.
- viii. The suspended directors and employees of the corporate debtor are directed to provide all documents in their possession and furnish every information in their knowledge and hand over the assets - moveable or immovable, of the corporate debtor, to the IRP/RP. In case of failure to



comply with this direction IRP/RP shall take immediate steps against the violators in accordance with the provisions of the Code.

- ix. The Counsel for the Petitioner is directed to send the copy of this order to communicate this order to the Corporate Debtor and the IRP with immediate effect, so that the IRP could take charge of the Corporate Debtor's assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.
- x. Registry shall forward a copy of this Order to:
- Insolvency and Bankruptcy Board of India, New Delhi;
 - Registrar of Companies – Maharashtra,
e-mail id: roc.mumbai@mca.gov.in;
 - Interim Resolution Professional, Mr. Vikram Kumar,
e-mail id: vikramau@gmail.com
 - Corporate Debtor,
Ludhiana Talwandi Toll Roads Private Limited
e-mail id: essel.roads@gmail.com
- xi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xii. Accordingly, this Petition is **admitted**.

Sd/-

HARIHARAN NEELAKANTA IYER
(MEMBER TECHNICAL)

Akshita, L.R.A.

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Certified True Copy

Copy Issued "free of cost"

On 24.06.2025

R. Lakshmi

Assistant Registrar

National Company Law Tribunal Mumbai Bench

