



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
CP (IB) No.423/(PB)/2023**

ORDER UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W RULE 4 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016.

IN THE MATTER OF:

PUNJAB NATIONAL BANK (INTERNATIONAL) LIMITED

Through Authorized Representative

Chief General Manager.

Registered Office: 1 Moorgate,

London, EC2R6JH

Financial Creditor

Versus

M/S MBL (MP) TOLL ROAD COMPANY LIMITED

Registered Office: Baani Corporate 1

Tower, Suite No.303, 3rd Floor,

Plot No.5, District Commercial Centre,

Jasola, New Delhi- 110076

CIN: U45204DL2011PLC226845

Corporate Debtor

Order Pronounced On: 21.01.2025

CORAM:

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Financial Creditor: Mr. Mithilesh Kumar Pandey, Mr. Rahul, Advs.

For the Corporate Debtor: Ms. Anusuya Salwan, Adv.



ORDER

The present application has been filed by Punjab National Bank International Limited (hereinafter referred to as 'Financial Creditor') on 12.05.2023, u/s Section 7 of the Insolvency and Bankruptcy Code, 2016 ('The Code'), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against MBL (MP) Toll Road Company Limited (hereinafter referred to as 'Corporate Debtor') for a total financial default of USD 53,38,895.44 @ (1USD = 82.50) Rs.44,04,58,873 /- (Rupees Forty Four Crores Four Lakhs Fifty Eight Thousand Eight Hundred Seventy Three Only)

At the outset it is relevant to mention herein that upon perusal of the application, certain inconsistencies were observed, in view of which this tribunal de-reserved the matter and sought clarifications from the applicant. The applicant filed a clarification dated 04.12.2024, which was duly considered.

PARTIES

1. The 'Financial Creditor' (FC) herein is a Private Company incorporated under the Companies Act, 1985 with the ROC of England and Wales having its registered office at 1 Moorgate, London, EC2R6JH. The Financial Creditor is represented through Mr. Ravindra Kumar, Chief Manager. The copy of Certificate of Incorporation of the FC has been annexed as **Annexure A-1.**
2. The Corporate Debtor (CD) herein is M/S MBL (MP) Toll Road Company Ltd., CIN: U45204DL2011PLC226845, having its registered office at Baani Corporate 1 Tower, Suite No.303, 3rd Floor, Plot No.5, District Commercial Centre, Jasola, New Delhi- 110076. The respondent herein



was incorporated on 31.10.2011 with a Paid Up Capital of Rs. 15,00,00,000 and Authorized Capital of Rs. 15,00,00,000. Therefore, this Bench has jurisdiction to deal with this application. Copy of Company's Master Data has been annexed as **Annexure (A-3)**.

BRIEF FACTS

1. Before delving into the legal issues, it is relevant to mention the brief facts of the case resulting into filing of the present petition. That Madhya Pradesh Road Transport Corporation Limited (*in short "MPRDC"*) owned by the Govt. of Madhya Pradesh invited Request for Qualification Applications for the development of Waraseoni-Lalbarra Section of MDR (Major District Road) from (Km.0/105 to Km.19/43 at SH-26) (approximately 18.30 Km) (*"the project"*) in the State of Madhya Pradesh by two laning on design, build, finance and operate (*in short "DBFOT"*) Toll Annuity Basis and MBL Infrastructure (*"selected bidder"*) having been qualified by MPRDC submitted its Financial Bid for the said project. The Financial Bid of MBL Infrastructure was found to be fair and reasonable and MPRDC issued Letter of Award (*"LOA"*) to MBL Infrastructure Ltd. on 25.10.2011 for agreed concession period of 15 years through Public Private Partnership (*"PPP"*).
2. Thereafter, MBL Infrastructure requested the MPRDC to accept the CD M/s MBL (MP) Toll Road Company (*which is a SPV company promoted by MBL Infrastructure Ltd.*) as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder under the LOA, including the obligation to enter into a Concession Agreement (Concessionaire). Thereafter the CD entered into a Concession Agreement dated 07.12.2011 with MPRDC for the specific purpose of implementing the aforesaid project. Thereafter the Concessionaire (CD herein) invited quotation independently for Development, Construction as well as Operation and Maintenance of the Project and it found the offer of MBL Infrastructure being



the lowest at arms length. Accordingly CD entered into an agreement dated 08.12.2011 with MBL Infrastructure.

3. It is in this background for the uptake of its project that the CD availed a loan from the FC to implement the project as per the Concessionaire Agreement. That the FC vide sanction letter dated 02.03.2012 sanctioned a Term Loan Facility (*Loan Facility*) of USD 8.06 Million. Based on the Sanction letter, the CD entered into a Loan Facility Agreement (*in short "Loan Agreement"*) with the FC on 13.04.2012. The Copy of Loan Facility Agreement has been annexed as **Annexure A-5** and MBL Infrastructure Ltd. gave a Corporate Guarantee dated 17.04.2012 in favor of the FC to secure the Loan Facility sanctioned in favor of the CD. The Copy of Corporate Guarantee dated 17.04.2012 has been annexed as **Annexure A-6**. Further, Escrow Agreement dated 22.03.2012 and Substitution Agreement dated 26.03.2012 were entered into between parties which have been annexed with the petition.
4. It is submitted by the FC that after initial payment as per terms the CD could not fulfil its payment obligation as per the Loan Agreement, therefore the Loan Account of CD was classified as Non Performing Asset (**"NPA"**) on 03.03.2023 and as on 05.04.2023 the CD is in default of Rs. 44,04,58,873. The NESL Certificate evidencing the default has been annexed as (**Annexure A- 14**).
5. It is submitted that debt is a legally enforceable debt which remains unpaid as on today. Further it is submitted by the FC that there are several acknowledgments made by the CD during the period 2012-2023 and the final payment was made on 03.03.2023. In view of the same the FC has filed the present application.

Submissions of the Ld. Counsel appearing for the Corporate Debtor are:

6. Notice was issued to the CD for filing of reply. After due service, the



Corporate Debtor appeared through its counsel and filed its reply denying averments made in the Section 7 application on the following grounds:

- a. Firstly, it is submitted by CD that there exist a dispute between the FC and the CD due to breach of Escrow Agreement dated 22.03.2012 and arbitration has already been invoked vide letter dated 20.03.2023 by the CD prior to alleged demand notice. Copy of letter dated 20.03.2023 has been annexed as **Annexure R-2**.
- b. Secondly, it is stated by the CD that the alleged demand notice has not been received by the CD and that the applicant despite knowing the address of MBL Infrastructure Ltd. has sent the alleged notice at an address which ceased to be of MBL Infrastructure w.e.f. from 14.08.2012. Notice of change of address has been annexed with the Reply. It is stated that since 14.08.2012 to 05.09.2018, the registered office of MBL Infrastructure Ltd. was at "Divine Bliss, 2/3 Judges Court Road, Alipore, Kolkata- 700027. Since 06.09.2018 the registered office of MBL Infrastructure Ltd. is at Baani Corporate One Tower Suite, 308, 3rd Floor, Plot No. 5, Commercial Centre, Jasola New Delhi- 110025. A copy of certificate dated 06.09.2018 issued by MCA and address as appearing in Master Data of MBL Infrastructure Ltd. on MCA website is annexed as **Annexure R-5**.
- c. Thirdly, it is stated that the amount, nature and the repayment schedule as claimed by the FC are incorrect and there is no 'Debt' that is due as on date and that the present petition has been filed for recovery of disputed amount which is against the objective of the Code.
- d. Further, it is stated by the CD that the CIR Process of the Holding Company of the CD i.e. MBL Infrastructure has attained finality and a Resolution Plan has been approved by this Adjudicating



Authority and upheld till the Hon'ble Supreme Court and that the FC was a part of the COC and it did not file its claim before the RP of the M/s MBL Infrastructure Ltd. and therefore the same did not form part of Resolution Plan. It is the stand of the CD that the claim of the FC in respect of Corporate Guarantee dated 17.04.2012 not being part of Resolution Plan stands extinguished. The counsel for CD has relied upon "**Ghanshyam Mishra and Sons Private Limited Vs Edelweiss Asset Reconstruction Company Limited, "2021 SCC Online SC 313 (Para 95)**" to strengthen its argument. Further the CD has relied upon certain extracts of the Resolution Plan of M/s MBL Infrastructure to further strengthen its argument.

Rejoinder was filed on behalf of the FC denying the grounds raised by the CD.

We have heard Ld. Counsel for both the parties and perused the documents submitted. In our considered view, it would be convenient to deal the present application Issue wise.

Analysis and Findings

ISSUE-1

Whether existence of a dispute between the FC and CD due to breach of Escrow Agreement dated 22.03.2012 bars a Section 7 petition to be entertained?

7. It is reiterated at the cost of repetition that MPRDC invited Request for Qualification Applications for the development of *the project* in the State of Madhya Pradesh by two laning on DBFOT, Toll Annuity Basis and MBL Infrastructure submitted its Financial Bid for the said project. The Financial Bid of MBL Infrastructure was found to be fair and reasonable and MPRDC issued LOA to MBL Infrastructure Ltd. on 25.10.2011 for agreed concession



period of 15 years through PPP.

8. Thereafter, MBL Infrastructure requested the MPRDC to accept the CD as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder under the LOA, including the obligation to enter into a Concession Agreement. Thereafter the CD entered into a Concession Agreement dated 07.12.2011 with MPRDC for the implementation of the aforesaid project. Thereafter subsequent agreements were entered between parties including the Escrow Agreement dated 22.03.2012 entered into between CD and MPRDC and PNB Mid Corporate Branch, Noida being the “Lender’s Representative” as well as the (“Escrow Bank/Agent”). That as per Clause 2 of the aforesaid agreement the Escrow Bank was to act as a Trustee for MPRDC, CD and FC.
9. Further Clause 3 and Clause 4 of the Escrow Agreement deals with the Deposit into Escrow Account and Withdrawal from the Escrow Account. Clause 3 and Clause 4 of the Escrow Agreement dated 22.03.2012 has been extracted below for ready reference-

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire:

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and / or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the MPRDC;
- (b) all funds received by the Concessionaire from its share – holders, in any manner or form;
- (c) all Fee Levied and collected by the Concessionaire;
- (d) any other revenues from or in respect of the Project Highway; and.
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds in the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.



3.2 Deposits by the MPRDC

The MPRDC agrees and undertakes that, as and when due and payable, it shall deposit into and / or credit the Escrow Account with;

- (a) Grant and any other monies disbursed by the MPRDC to the Concessionaire;
- (b) All fee collected by the MPRDC in exercise of its rights under the Concession Agreement; and
- (c) Termination Payment

Provided that the MPRDC shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and / or credit the Escrow Account with all disbursements made by them in relation to or in respect of the project; provided that not with standing anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payment to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financial agreements.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdraws During Concession Period

4.1.1 At the beginning of every month or at such shorter intervals as the Lenders Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub- Accounts and pay out therefrom on the Payment Date(s).

- (a) all taxes due and payable by the Concessionaire;
- (b) all payments relating to construction of the Project Highway, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the MPRDC, provided It certifies to the Escrow Bank that it had incurred such expenses in accordance with the provision of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Concession fee due and Payable to the MPRDC;
- (f) Monthly proportionate provision of Debt Service due in any Accounting year including repayment of Revenue Shortfall Loan;



- (g) Premium due and payable to the MPRDC.
- (h) All payment and Damages certified by the MPRDC as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (i) Debt service payment in respect of Subordinated Debt;
- (j) Any reserve requirements set forth in the Financing Agreements; and
- (k) Balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank with prior written approval of the Lenders Representative, details of the Amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

10. What can be inferred from the above mentioned clauses is that the Escrow Bank acted as a trustee for MPRDC, CD and the Lender's representative and that all money to be received by the Concessionaire or deposits by MPRDC or by the Lender was to be deposited in the Escrow Account and that the money from the Escrow Account could be appropriated as per Clause 4 of the Agreement. That it was an obligation of the Concessionaire that in the beginning of each accounting year (not later than 60 days, from commencement of accounting year) it shall with the prior approval of the Lender Representative provide the Escrow Bank details of amount likely to be required for the payment to be made. It is the stand of the CD that the FC caused breach of Escrow Agreement by not releasing payments for EPC expenses, O&M Expenses, Hedging Cost for Foreign Exchange Fluctuation etc. and unilaterally remitted the amount from the Account in breach of the Agreement and that the payments were released at whims and fancies of the Lenders. The CD has relied upon letter dated 08.08.2019 written by it to the Bank to show that there was a breach on the part of Escrow Bank. Relevant excerpts of the letter dated



08.08.2019 is extracted below:



Ref: MBL(MP)TRCL/2019/0914
Date: 8th August 2019

The Managing Director,
Punjab National Bank International Ltd.
87, Gresham Street,
London – EC2V7NQ

Subject: Release of priority payments to O&M contractor in terms of escrow agreement dated 22.03.2012 and Concession Agreement dated 07.11.2011 with MPRDC for Development of Waraseoni – Lalbarra Road on BOT (Toll+Annuity) basis

Dear Sir,

Kindly refer to our emails dated 11.06.2019, our letter nos. MBLMPTRCL/2019/0662 dated 11.06.2019, our emails dated 27.05.2019, our letter nos. MBL(MP)TRCL/2019/0573 dated 27.05.2019, our emails dated 23.05.2019 and our letter no. MBLMPTRCL/2019/0555 dated 23.05.2019, MBLMPTRCL/2019/0332 dated 06.04.2019, our emails dated 08.08.2018 (letter no. MBLMPTRCL/2018/0514), 21.08.2018 (letter no. MBLMPTRCL/2018/0571), 24.08.2018 (letter no. MBLMPTRCL/2018/0581 dated 24.08.2018), 01.09.2018 (MBLMPTRCL/2018/0598), 21.02.2019 (MBLMPTRCL/2019/0167), 22.03.2019 (letter no. MBLMPTRCL/2019/0168), 26.03.2019 (MBLMPTRCL/2019/0271) and 01.04.2019 (letter no. MBLMPTRCL/2019/0305) and telephonic discussions.

The amount payable to the O&M and EPC Contractor as on 31/03/2019 is as follows:

For O&M expenses	: Rs 2,75,27,546
For EPC expenses	: Rs 16,78,05,607
Total	: Rs 19,53,33,153

The project is liable for termination unless proper O&M is taken up on urgent basis.

You are in breach of escrow agreement by not honouring the priority of payments. If any adverse action is taken by MPRDC, you shall solely be responsible for the losses and damages caused to the concessionaire.

TARI
You are requested to kindly release payment of Rs. 2,75,27,546 to O&M contractor. Any further delay may be fatal to the project and is hindrance to release of annuity due on 4th August, 2019 and release of withheld amount of Rs. 11,21,79,060/- (first three annuity have been withheld by MPRDC on account of BOT, Change of Scope etc.) We have made representation to MPRDC for release of the withheld amount. However, MPRDC have shown serious concern about O & M and also about the priority of O&M ignored by the lender.



We request you to kindly remit Rs. 2,75,27,546 as O&M payments in favour of the O&M contractor M/s MBL Infrastructures Ltd to the following bank account.

Bank Particular: - State Bank of India, Nehru Place Branch.

Account No. : -36918472580

IFS Code : SBIN0041077

Alternatively, we request you to kindly withhold Rs. 2,75,27,546 in the escrow account for payments for O&M work to be executed through an alternate contractor.

Thanking you,

Yours faithfully,

For MBL (MP) Toll Road Company Ltd.

A K Lakhota

(Director)

Cc: The AGM, Punjab National Bank, Mid Corporate Branch, Sector -63, Noida-201301 with a request to strictly follow the priorities of payments as per escrow agreement and not to breach the same

Several other letters have also been relied upon by the CD to substantiate its stand that the hedging cost was not allowed from the Escrow Account by the Applicant which caused substantial loss to CD and that it has a claim of around Rs. 19,74,63,364 (approx) (Indian Rupees Nineteen Crores Seventy Four Lakhs Sixty Three Thousand Three Hyndred and Sixty Four only) caused due to non hedging foreign currency fluctuation. Further it is stated by the CD that it has already invoked the arbitration and has issued notice dated 20.03.2023 to both the MPRDC and the FC. Letter dated 20.03.2023 has been annexed as **Annexure R-2**. Per Contra, Ld Counsel for FC states that respondent's allegation regarding breach of escrow agreement is unfounded and it has already provided detailed explanation to the Respondent vide letter dated 22.06.2020 and further Ld. counsel relies upon its various letters dated 1.09.2020, 17.11.2020, 16.02.2021, 10.03.2021 and 27.07.2022



to show that detailed explanation on treatment of release of various payments from escrow account has been given to Respondent. Further on the issue of Foreign Exchange Risk, it is categorically stated while relying upon Point 27 of the sanction letter dated 02.03.2012 that the Respondent has accepted that it will bear all additional financial risk/ other risk arising out of foreign exchange exposure. To substantiate the issue of Foreign Exchange Fluctuation and hedging Ld counsel also relies upon correspondence dated 17.11.2020 and 16.02.2021. Relevant Portion of the Sanction Letter dated 02.03.2012 is extracted below:

27.	Promoter / Sponsors Undertakings	<p>MBL shall undertake that:</p> <ul style="list-style-type: none"> • They shall arrange to meet cost overrun in respect of completion of the Project to the extent of 5% of the total project cost. • They shall arrange to meet any shortfall in the internal accruals to the Company vis-à-vis the assumption in the means of finance as per Base Case Financing Plan; • They shall bear any additional financial expenses / preliminary & preoperative expenses vis-à-vis the base case estimates for the Project arising out of the foreign exchange exposure due to any ECB component in the debt funding of this Project up to the time a hedging plan satisfactory to the Lenders is implemented; • MBL shall retain management control over the project company during the entire tenure of the senior debt facilities. They shall maintain a minimum shareholding of 51% in MBL (MP) TRCL which can be reduced to 26% upon repayment of 75% of the envisaged debt subject to there being no outstanding event of default • MBL shall also provide a Letter of Comfort for meeting any shortfall in the Borrower's obligations to Lenders in case of termination of the Concession due to Concessionaire Event of Default during construction. <p>All the above undertakings shall be mutually exclusive of each other.</p>
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11. At this juncture, it is relevant to note the dispute, if any, that has been raised by the CD before the Arbitrator in terms of the Escrow Agreement dated 22.03.2012, does not preclude a FC from initiating proceedings under this Code. Scope of enquiry under the Code is that of existence of 'debt' and 'default' which is a sine qua non for the admission of an application under Section 7 of the Code. A Pre-Existing dispute does not act as a defence to a Section 7 application unlike a Section 9 Application under the Code. The payment to FC was to be made as per the Facility Agreement. It is no one's case that dispute regarding



facility agreement has been raised. Further it would be relevant to note clause 21 of the Facility Agreement which reads as follows:

21. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 21 is an Event of Default.

21.1 Non-payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by administrative or technical error in the banking system relating to the transmission of funds; and
- (b) payment is made within three Business Days of its due date.

21.2 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.1 (Non-payment))
- (b) No Event of Default will occur under paragraph (b) of this Clause in relation to Clause 20.1 (Authorisations) if the failure to comply is capable of remedy and is remedied within five Business Days of the Lender giving notice to the Borrower or an Obligor becoming aware of the failure to comply.

21.3 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of an Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.



21.4 Security

Any Security Document is not in full force and effect or does not create, in favour of the Lender, the Security which it is expressed to create with the rating and partly it is expressed to have.

22. RIGHTS UPON EVENT OF DEFAULT

On and at any time after the occurrence of an Event of Default, the Lender may, by notice to the Borrower:

- (a) cancel the Commitment whereupon it shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender

12. Clause 21 of the Facility Agreement stipulates the condition that gives rise to Event of Default on part of Obliger (*Obliger defined as the borrower in the agreement*) that if he does not pay on the due date any amount payable pursuant to the Financing Agreement, the same would constitute an event of default and that the lender has the right to seek his remedy, the only respite from event of default would be if the failure



of the payment is caused by administrative or technical error in the banking system or payment is made within three business days of its due date which is not the case herein. The CD has categorically stated that the repayment of debt was to be from the User Toll Fees Collected and Annuity amount to be received from MPRDC and it was not able to service the debt of the lenders, due to alleged substantial delay by MPRDC for depositing annuity and further due to alleged breach of escrow agreement by the FC for which as per the submission by Ld. Counsel for CD, the dispute has already been raised before Ld. Arbitrator. In this context we observe that the jurisdiction in respect of the dispute relating to Escrow Agreement lies under the Arbitration and Conciliation Act, 1996 and this Adjudicating Authority exercising its summary jurisdiction cannot go beyond the rigours of the Code and has to necessarily see if there is any debt and a consequent default.

13. It is pertinent to mention that on one hand Ld. Counsel for CD states that an amount of USD 1.78 Million is due vis-à-vis total outstanding amount of USD 5.33 million claimed by FC for the period July, 2023 and in the same breath Ld. Counsel states that even the said amount is not due and would be paid out of future annuities. However from the bare perusal of ECB-2 as attached by CD in its reply dated 19.08.2023 Annexure R-15, it is observed that as on July 2023, USD 1.78 Million is outstanding. Further, it is categorically stated by Ld. Counsel for the FC that there was an OTS proposal dated 06.10.2023 which was rejected by the FC. In such circumstances and documents on record, it is clear that there exists a debt and consequent default.
14. Further it is also relevant to note that there were intermittent payments received by PNB, Moorgate in the past, not full installments, yet no Section 7 application was filed for the reason best known to FC. Be that as it may, by sheer indulgence of this Tribunal, the CD, as per order of this Adjudicating Authority dated 24.04.2024, undertook to make the



payment as per the offer letter dated 28.03.2024 (given by the FC) to discharge the liability of the loan amount for the pending two quarters and 50% of the installment due for the last quarter and that some payment was also done which is recorded in our order dated 01.05.2024. Herein it is relevant to mention that, CD itself in its affidavit dated 29.04.2024 has stated that the outstanding principal amount of Rs. US\$1.78 mn as stated in return ECB-2 for the month of March 2024 filed by respondent stands reduced to US\$ 1.005 mn. However, the counsel for the FC in his arguments submitted that even if the said amount has been paid, the CD has been defaulting since a long time and the threshold for insolvency proceedings being Rs. 1 crore is met. In our view, the stand taken by CD that there already exists a dispute regarding the Escrow Agreement finds no relevance, and as such, there is a debt and a consequent default on the part of CD. Further CD has also raised an issue regarding delivery of demand notice by the FC by stating that demand notice has not been sent to correct address of CD, in this regard we are of the view that the submission of the respondent is with reference to M/s MBL Infrastructure and not the Corporate Debtor herein, it is observed from (Annexure A-10 of the application) that the aforesaid demand notice has been sent to registered address of the CD available as per the Master Data. Further, even if we assume that the demand notice was not sent to the correct address, the same does not enure to the benefit of CD since sending a demand notice under Section 7 of the Code is not an essential for filing an application unlike being a pre-requisite under Section 9 of the Code. Accordingly, we do not find force in the argument put forth by Ld. Counsel for CD.

15. At this juncture it is also relevant to note that during the course of arguments, certain queries were raised by the bench especially regarding the two loan accounts mentioned by the counsel for CD which has been recorded in our order dated 18.01.2024. The order dated



18.01.2024 is extracted below for ready reference:

“On various occasions, we allowed Ld. Counsel Mr. Mithilesh Kumar Pandey appearing for the Punjab National Bank (PNB) to argue the matter.

2. Ld. Counsel Ms. Anusuya Salwan on behalf of the Corporate Debtor appeared and in continuation of Yesterday's arguments, she started the argument today.

3. We raised certain queries based on the Escrow Account.

4. Ld. Counsel for the PNB stated that the disbursement of loan amount has been done to the individual account of the Corporate Debtor bearing no. 560008568 (sic. 56000856) (at Annexure – A-12, Vol-III at page no. 496).

5. The PNB, Noida will be the Escrow Bank and the Escrow Account is stated in clause 2.1 of the Escrow Agreement dated 22.03.2012. The Establishment and operation of the Escrow Account is in Clause 2.3. Clause 3 refers to Deposits into Escrow Accounts by various parties including Senior Lenders. Clause 4 refers to Withdrawal from Escrow Account.

6. On the basis of the terms of the Escrow Agreement, we called upon the Ld. Counsel for the PNB to clarify, whether Account No. 560008568 (sic. 56000856) (at Annexure – A-12, Vol-III at page no. 496) is an Escrow Account or there is a separate Escrow Account in terms of the Escrow Agreement dated 22.03.2012. To verify the records Ld. Counsel for the PNB seek time to clarify the same.

7. Since the core issue is whether the Escrow Account in terms of Escrow Agreement is different from Account No. 560008568 (sic. 56000856) and will it have a bearing on the issue raised in this case.

8. He also stated that in the Section 7 petition nowhere the Escrow Account number has been mentioned.

9. Ld. Counsel for the PNB seeks and is granted time to seek clarification from the Bank and provide the Escrow Account number if there is any separate account.

10. At the request and with the consent of both parties, list the matter for a physical hearing on 22.01.2024.

On 22.01.2024, Ld. Counsel for FC sought more time to take instruction on the issue raised and the matter was posted to 30.01.2024. Further on 30.01.2024 we recorded as below:



“Heard Mr. Mithilesh Kumar Pandey, Ld. Counsel for the Petitioner, who appeared physically.

2. Heard Ms. Anusuya Salwan, Ld. Counsel for the Respondent, who also appeared physically.

3. Mr. Puneet Kumar, Assistant General Manager, Punjab National Bank, London appeared through VC and assisted us in the proceedings.

4. Ld. Counsel for the Petitioner i.e. Punjab National Bank seeks and is granted time to take further instructions regarding the various accounts namely the Loan Account, Escrow Account and the Current Account of the Respondent/Corporate Debtor being maintained by the Punjab National Bank.

5. Ld. Counsel for the Respondent/Corporate Debtor also seeks and is granted liberty to file the latest statement of the Escrow Account and the advance copy of the same be supplied to the Ld. Counsel for the Petitioner.

6. Mr. Puneet Kumar, Assistant General Manager, Punjab National Bank, London shall assist this Adjudicating Authority in the proceedings appearing through VC on the next date of hearing i.e. 20.02.2024.

7. Since the parties are seeking adjournment for placing additional documents and more particulars, at request and by consent of both sides, list the matter on 20.02.2024.”

In compliance of order dated 30.01.2024, the counsel for CD filed an affidavit with a copy of Statement of Account No. 6420002100000388 and a copy of Statement of Account No. 6420002900000131 and Ld. Counsel for FC also filed a note dated 19.02.2024 disputing the points raised by CD. In this regard it is relevant to mention that FC clarified by way of clarification dated 04.12.2024, that account ending with “856” is a loan account located in London, from which the funds were remitted to account ending with “388.” On 20.02.2024, we recorded as follows:



“We have heard the Ld. Counsel appearing for the Financial Creditor as well as Ld. Counsel for the Corporate Debtor. On 19.02.2024, two volumes have been filed by the Corporate Debtor i.e. hard copy of statement of account relating to an account having last three digits “388” maintained with Punjab National Bank, NOIDA and copy of statement of accounts having last three digits “131” maintained with Punjab National Bank, NOIDA. There are two relevant accounts in this lis.

According to the Ld. Counsel for the Corporate Debtor both the accounts are based on an Escrow Agreement. However, this fact is disputed by the Ld. Counsel for the Punjab National Bank stating that the account having last three digits “388” is a Current Account solely maintained by the Corporate Debtor and it has nothing to do with the Loan Account of Punjab National Bank International Limited (Moorgate, London).

In the meanwhile, one volume of documents dated 19.02.2024 has been submitted by the counsel for the Punjab National Bank both in soft copy and hard copy.

In the meanwhile, we order that the account opening form of the Current Account having last three digits “388” opened in the year 2012 should be furnished with full particulars so that we can understand whether it was an account solely run by the Corporate Debtor or otherwise. Further, the correspondence with the Punjab National Bank, if any, for operating this account under Escrow Account to be produced. This has to be furnished by the Corporate Debtor as they are opened at their request. Corporate Debtor is directed to file these documents by way of an affidavit with advance copy to the Ld. Counsel for the Punjab National Bank. M/s. Punjab National Bank is at liberty to respond to the same on merits based on documents.

At request and by consent, list the matter on 19.03.2024.



In compliance of the above order the CD filed an affidavit dated 05.03.2024. wherein it reiterated its stand that both the account namely account no. ending with “388” and “131” are based on an Escrow Agreement however the FC states that account ending with “388” is a Current Account solely maintained by the Corporate Debtor (as recorded above). Ld. Counsel for CD was to provide account opening form for loan account no. “388”, however Ld. Counsel for CD could not provide any account opening form relating to the said account.

In view of the above, we observe that the existence of dispute between the FC and CD due to breach of Escrow Agreement dated 22.03.2012 does not enure to the benefit of the CD, and it does not bar a section 7 petition to be entertained.

ISSUE 2

Whether claim in the present matter not forming part of Resolution Plan of MBL Infrastructure, gets extinguished on approval of Plan.

16. It is the stand of CD that CIRP of the parent company of CD i.e. MBL Infrastructure (*gaurantor in the present case*) has been initiated vide order dated 30.03.2017 and that the resolution plan has also been approved vide order dated 18.04.2018 which has attained finality upto the Hon’ble Supreme Court. That FC was a part of COC and voted in favor of the plan, but did not file its claim w.r.t this CD before RP of MBL Infrastructure, on account of the same his claim did not form part of the Plan. Thus on this account his claim not being part of Plan stand extinguished. In this light it is relevant to mention that the FC has categorically stated that at the time of CIRP of Parent Company of CD i.e. MBL Infrastructure (*corporate guarantor herein*) there was no default on the part of CD and hence there was no occasion to register its claim before the RP of MBL Infrastructure regarding the present loan account.



17. Further it is stated by the FC that the Corporate Guarantor i.e. MBL Infrastructure and its group companies took various loans from PNBIL, and that the plan of MBL Infrastructure was approved for another loan facility and this loan facility pertains to Loan Account No. “56000856”. It is categorically stated in the Affidavit dated 08.11.2023 filed by the FC that PNBIL filed a claim for a different loan facility and not for the present loan facility and that the CD was regular in its payment with respect to loan account no. “56000856” of the CD and there was no occasion for the FC to file claim for the present loan account.

18. In this context it is relevant to mention that law has been laid to state that if the creditor recovers a part of amount guaranteed by the surety and agrees not to proceed against the surety for the balance amount, that will not extinguish the remaining debt payable by the principal borrower, in such a case the creditor can proceed against the principal borrower to recover the balance amount and that involuntary acts of principal borrower or creditor do not result in the discharge of surety or vice-versa. **(BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd., 2024 SCC OnLine SC 1767).**

15. If the creditor recovers a part of the amount guaranteed by the surety from the surety and agrees not to proceed against the surety for the balance amount, that will not extinguish the remaining debt payable by the principal borrower. In such a case, the creditor can proceed against the principal borrower to recover the balance amount. Similarly, if there is a compromise or settlement between the creditor and the surety to which the principal borrower is not a consenting party, the liability of the borrower qua the creditor will remain unaffected. The provisions regarding the discharge of the surety discussed above show that involuntary acts of the principal borrower or creditor do not result in the discharge of surety.

19. In the present case, the FC didn't even have the claim for the present loan account as stated above at that particular point of time when the guarantor was admitted into CIRP. Neither the FC (herein) was the



Applicant in the petition filed against Guarantor therein nor did the FC file any claim with respect to present loan account. Had it been the case, that there was a default on the part of CD (*herein, for the present loan account*) at that particular point of time, and FC filed a claim before the RP of MBL Infrastructure and that FC had to face a haircut because of the Resolution plan, in that case also the FC could have recovered the left over amount from the Principal Borrower. In the matter at hand, as discussed above, neither there was default on the part of CD(for the present loan account) nor did the FC have occasion to file claim before the RP at that point in time. Hence in such scenario the plea taken by CD cannot be sustained and that claim of the FC for the present loan account sustains in the eyes of law.

In view of the above analysis, there is a clear case of debt and default. We are inclined to **admit** the present petition bearing no. C.P. (IB) – 423/(PB)/2023.

ORDER

In light of the above facts and circumstances, it is, **hereby ordered** as follows:

- i.** The Application bearing C.P. (IB) – 423/(PB)/2023 filed by Punjab National Bank (International) Ltd. under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/S MBL (MP) Toll Road Company Ltd. is hereby **Admitted**.
- ii.** As a consequence of the Application CP (IB) 423(PB)/2023 being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code.



However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

- iii. The FC has proposed the name of **Mr. Piyush Moona** as the IRP. His email id is **piyushmoona@gmail.com**. His registration number is **IBBI/IPA-001/IP-P00990/2017-2018/11630**. He has filed his written communication, (Annexure A-18 at Page 666-670, Volume 1 of the Application) as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Hence, we **appoint Mr. Piyush Moona** as the IRP of the Corporate Debtor.
- iv. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v. During the CIRP period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- vi. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.



- vii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii.** The FC shall deposit a sum of **Rs 5,00,000/- (Rupees Five Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
- ix.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.
- x.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- xi.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
- xii. List the matter on 01.04.2025.**

Sd/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-

(AVINASH K SRIVASTAVA)
MEMBER, TECHNICAL