

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No.25/7/HDB/2022

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

IN THE MATTER OF:

M/s Allied Hi-Tech Industries Private Ltd.

A company incorporated under the
Companies Act, 1956
Having registered office at
W-6/24, Sainik Farm
New Delhi – 110 062.

.. **Financial Creditor**

VERSUS

Karvy Data Management Services Limited

Registered office at: Karvy Gateway
Plot No.38 & 39
Nana Financial District
Gachibowli, Hyderabad
Rangareddy District
Telangana – 500 032.

... **Corporate Debtor**

Date of Order: 15.09.2023.

Coram:

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA

HON'BLE MEMBER (JUDICIAL)

SHRI CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For applicant : Shri S. Ravi, Senior Counsel with
Shri Laxmikanth Reddy, Advocate.
For respondent : Shri Avinash Desai, Senior Counsel with
Ms. Mrudhula Sarampally, Advocate.

PER BENCH

1. This Application is filed by M/s Allied Hi-Tech Industries Private Ltd. (hereinafter referred as 'Financial Creditor') under Section 7 of Insolvency and Bankruptcy Code (hereinafter to be referred as "IBC"), read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against Karvy Data Management Services Limited (hereinafter referred as 'Corporate Debtor'), alleging that the following amount is due and payable to the petitioner as on 31.12.2021:

• Principal amount	..	15,65,00,000
• Interest amount	..	02,40,63,164
• Total	..	18,05,63,164
• Interest @ 19% for Nov and Dec 2021	..	00,57,33,499
• Total amount claimed in default	..	18,62,96,663

Dates of default: 04.01.2020, 14.01.2020, 22.01.2020, 01.02.2020, 03.04.2020 and 24.05.2020 and is subsisting.

Computation of total debt amount is at ANNEXURE-10.

2. The present Company Petition is filed by Allied Hi-Tech Industries Private Limited/ Financial Creditor, incorporated on 01.10.2007, having CIN: U21098DL2007PTC168880, whose Master Company Data is filed at ANNEXURE-1, through its Accounts Head, Vinod Kumar Singh, by virtue of Board Resolution dated 12.01.2022 (ANNEXURE-2).

3. Respondent/ Corporate Debtor is having CIN: U2300TG2008PLC058738, incorporated on 21.04.2008, whose Master Company Data is at ANNEXURE-4.

4. The Contentions as put-forth by the Financial Creditor are:

FINANCIAL ASSISTANCE BY WAY OF INTER CORPORATE DEPOSITS (ICDs):

(i) The petitioner and the respondent had past relations. In January 2019, the respondent/ Corporate Debtor approached the petitioner/ Financial Creditor seeking Inter Corporate Deposit (ICD)/ Loan assuring that the amount will be repaid with interest at 13% per annum, within a year.

(ii) In furtherance, respondent/ Corporate Debtor had issued letters dated 03.01.2019, 21.01.2019, 31.01.2019, 13.02.2019, 01.04.2019 and 23.05.2019 (ANNEXURE-6) requesting the petitioner for Inter Corporate

Deposit. In response to such letters (Annexure-6) the petitioner provided Inter Corporate Deposits to the respondent by RTGS mode.

(iii) Respondent/ Corporate Debtor having received total amount of Rs.16,00,00,000/- from the petitioner as under:

S.No.	Request Letter Date	Inter-Corporate Deposit(ICD) Amount in Rs.	Mode	UTR No.
1	03.01.19	3,00,00,000/-	RTGS	CORPR22019010300602934
2	13.02.19	2,00,00,000/-	RTGS	KKBKR52019021300731583
3	21.01.19	2,00,00,000/-	RTGS	KKBKR52019012100770806
4	31.01.19	3,00,00,000/-	RTGS	KKBKR52019013100816140
5	02.04.19	1,00,00,000/-	RTGS	KKBKR52019040200894116
6	23.05.19	5,00,00,000/-	RTGS	KKBKR52019052300895815
	Total	16,00,00,000/-		

(iv) The respondent had issued receipts and Demand Promissory Notes dated 03.01.2019, 21.01.2019, 13.02.2019, 31.01.2019, 02.04.2019 and 23.05.2019 (ANNEXURE-7), acknowledging the receipt of the above amount. The respondent had also issued Demand Promissory Notes dated 03.01.2019, 21.01.2019, 31.01.2019, 13.02.2019, 02.04.2019 and

23.05.2019. The respondent had issued post-dated cheques. Copies of Demand Promissory Notes and Post-dated cheques are at ANNEXURE-8.

(v) The respondent/ Corporate Debtor had defaulted in payments which fell due one year after each Inter Corporate Deposit, viz. on 04.01.2020, 14.02.2020, 22.01.2020, 01.02.2020, 03.04.2020 and 24.05.2020. Thus, out of the total outstanding amount of Rs.16,00,00,000/- the respondent made the following payments:

On 31.01.2020	..	Rs.10,00,000/-
On 18.02.2020	..	Rs.25,00,000/-
Total	..	Rs.35,00,000/-
Balance outstanding	..	Rs.15,65,00,000/-
After adding interest	..	Rs.18,62,96,663

as detailed above.

(vi) The respondent/ Corporate Debtor issued various letters/ e-mail communications seeking time to make payments but could not pay. By way of letter dated 28.12.2019 the respondent acknowledged and admitted the debt and requested extension of time for repayment of Inter Corporate Deposit amounts, but in vain. Copies of e-mail communications dated 07.05.2018, 19.06.2018, 11.01.2019, 30.01.2019, 02.01.2020, 11.04.2020, 12.09.2021, 20.09.2021, 27.09.2021, 20.10.2021, 23.10.2021, 24.10.2021,

12.11.2021, 18.11.2021, 16.12.2021 are at ANNEXURE-9. Copies of Incorporation Certificate, AoA, MoA, Director details are at ANNEXURE-11. Bank statement of the petitioner is at ANNEXURE-12.

5. COUNTER DATED 31.03.2022 FILED BY THE RESPONDENT/ CORPORATE DEBTOR WITH THE FOLLOWING CONTENTIONS:

CONTENTION-I:

Authority of the signatory, who signed the petition.

(i) Vinod Kumar Singh has signed Form and Annexures without proper authorisation and in violation of I&B (AAA) Rules, 2016 and NCLT Rules, 2016. As such said signatory's authentication and verification of information stated in Form-1 is not valid. Besides the alleged Board Resolution dated 12.01.2022 (Annexure R/1 of this Counter), under which Vinod Kumar Singh has been authorised does not have seal of the petitioner.

(ii) Financial Creditor being a company registered under the Companies Act, 1956 is a juristic person, which acts through Board of Directors collectively. An individual director, whose name/ designation is not mentioned in the alleged Board Resolution has no power to act on behalf

of the company unless specific power is given to him. Thus, the present petition is not maintainable for want of proper authorisation.

CONTENTION-II:

The respondent is Financial Service Provider, not a Corporate Person.

(i) It is submitted that the respondent is not a corporate person under section 3(7) of the IBC as respondent is a financial service provider as defined u/s 3(17) of the IBC.

(ii) The respondent relying on the following definitions under IBC contends that the petition is not maintainable.

- Respondent does not fall under the definition of ‘Corporate Debtor’ as defined under section 3(8) of the IBC, which reads:

3(8). “corporate debtor” means a corporate person who owes a debt to any person.”
- Petitioner is not a Corporate Person as defined under section 3(7) of the IBC, which reads:

3(7) “corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.”

- Petition under section 7 of IBC is not maintainable against financial service providers. Said terms is defined u/s 3(17) of IBC, which reads:

3(17) *“financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;”*

CONTENTION-III

Default occurred during the suspended period.

Purported default by the respondent had occurred during the period from 25.03.2020 to 25.03.2021, during which period proceedings under the Code have been suspended.

CONTENTION-IV:

The present petition is hit by SEBI KYC Regulations.

- (i) Relying on the following regulations of SEBI KYC Regulations, 2011 the respondent contends that the respondent is a ‘financial service provider’ and thus, the petition under section 7 of IBC is not maintainable against the respondent.

- Respondent is a registered KYC Registration Agency under Regulation 7 of SEBI KYC Regulations, 2011 (ANNEXURE R/2 of this Counter). Respondent has been granted registration by SEBI vide letter/ certificate dated 22.11.2012 (ANNEXURE R/3 of this Counter) to be a registered KYC Registration Agency.
- Regulation 2(h) defines KYC Registration Agency (KRA) as follows:

“KYC Registration Agency (KRA)” is a company formed and registered under the Companies Act, 2013 (18 of 2013) and which has been granted a certificate of registration under these regulations which hereinafter shall be deemed to be an intermediary in terms of the provisions of the Act.”

- Section 2(f) of SEBI KYC Regulations is as following:

“(f) ‘Intermediary’ means an entity associated with securities market and registered under sub-section (1A), (1B) and (1) of section 12 of the Act, who is required to do KYC of its clients.”

Thus, the respondent is an intermediary under SEBI Act, 1992. It is engaged in providing KYC Services to its clients. It is thus, submitted that as SEBI, a financial regulator under section 3(18) of IBC and it has registered the respondent as an intermediary and the respondent provides financial product in the form of providing KYC services to its clients as defined under section 3(15) of IBC. Thus, the respondent being a ‘financial

service provider' does not come within the ambit of 'corporate debtor' as defined under section 3(8) of the Code.

(ii) KYC Registration Agencies enjoy immunity from invocation of IBC proceedings:

It is submitted that the Sub-Committee of Insolvency Law Committee for Notification of Financial Service Providers u/s 227 of the IBC, 2016 vide its report dated 04.10.2019 (ANNEXURE R/4 of this Counter) noted that KYC Registration Agency registered with SEBI are financial service providers. Said Sub-committee has stated that question of applicability of IBC, as it is to KYC Registration Agencies is pending before the regulators and as such the distribution of FRPs for the purpose of applicability of IBC is yet to be notified. Till such distribution of FRPs is notified by the Central Government after receiving approval from SEBI, insolvency resolution process against KYC Registration Agencies is not maintainable.

(iii) History of KYC Registration Agencies has been furnished in greater detail in paras 21 to 27 (pages 8, 9 and 10) of the Counter. Para 27 thereof is reproduced hereunder:

“27. .. there are only 5 KRAs registered under KYC Regulations in India as on today and the respondent is one among the limited 5 KRAs and is extremely crucial for handling the KYC data in the country. List of KRAs is at ANNEXURE R/5.”

(iv) Services provided by KYC Registration Agencies is discussed in paras 28 to 32 (pages 10 and 11) of the Counter. Para 32 of the Counter is reproduced hereunder:

“32. .. any order of admission against the respondent, which is one of the five KRAs in the country is a systematically critical entity and would have severe and serious impact in the financial services market, especially in the securities market as it would affect all the intermediaries in the securities market. It is submitted that applicant services more than 36 lakh investors through 200 various financial intermediaries, all of whom would be adversely affected, if the applicant is admitted into corporate insolvency resolution process.”

(v) Obligations of KYC Registration Agency (KRA) is enlisted in para 33 (page 12) of the Counter, which are taken note of. The respondent contended that it being a financial service provider is not a corporate person under the IBC. Thus, the present petition u/s 7 of IBC is liable to be dismissed.

CONTENTION-V:

The present petition is hit by section 10A of the IBC.

(i) The alleged default by the respondent has occurred between 25.03.2020 and 25.03.2021, viz. during the period under which proceedings under IBC have been suspended as per section 10A of the IBC. Section 10A has been inserted vide The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, No.17 of 2020. A copy of such

amendment as published in Gazette of India on 23.09.2020 is at ANNEXURE R/6 of this Counter.

“10A. Suspension of Initiation of corporate insolvency resolution process.

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

Applicability of section 10A of IBC is extended till 25.03.2021 vide Notifications dated 24.09.2020 and 22.12.2020 (ANNEXURE R/7 of this Counter). Out of defaults occurred on various dates, the latest default alleged was on 24.05.2020. It had occurred between 25.03.2020 to 25.03.2021. As such the present petition is not maintainable.

CONTENTION-VI:

Mediation Proceedings:

The parties were engaged in mediation proceedings bearing No.3 of 2020 before Hon'ble Delhi High Court Mediation and Conciliation Centre,

wherein the parties filed Conciliation Agreement. By e-mail dated 16.12.2021 (ANNEXURE R/8) the petitioner has forwarded Conciliated Agreement.

CONTENTION-VII:

Contradictions in Form-I.

The petitioner claimed an amount of Rs.18,05,63,164/- as principal amount in default. The respondent submits that the actual principal amount is Rs.15,65,00,000/-. Even the Computation Table (ANNEXURE R/9 of this Counter) provided by the petitioner speaks of Rs.15,65,00,000/- as default amount. However, the petitioner has added Rs.02,40,63,164/- towards interest.

6. REJOINDER DATED 22.04.2022/ 25.04.2022 FILED BY THE PETITIONER/ FINANCIAL CREDITOR IN RESPONSE TO COUNTER DATED 31.03.2022 FILED BY THE RESPONDENT/ CORPORATE DEBTOR:

The response given by the petitioner in this Rejoinder to the contentions raised in the above Counter are discussed hereunder.

RESPONDENT'S CONTENTION-I:

Authority of the signatory, who signed the petition.

RESPONSE BY THE PETITIONER:

Board Resolution dated 12.01.2022 is provided by the petitioner in favour of Vinod Kumar Singh. He is the Accounts Head. The Resolution bears the Company Stamp with designation. Thus, the contention is not sustainable.

RESPONDENT'S CONTENTION-II:

The respondent is Financial Service Provider, not a Corporate Person.

RESPONSE BY THE PETITIONER

(i) A bare perusal of the respondent's profile (ANNEXURE-2) would reveal that they do not provide any financial services. Besides, KYC services would not fall under 'financial services'. Even IBBI Report and Insolvency & Bankruptcy (Insolvency & Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (ANNEXURE-2), do not in any manner mention KYC service providers as financial service providers. By any stretch of imagination the respondent cannot be considered as a financial service provider.

(ii) Section 3(7) of the IBC excludes a financial service provider, viz. a person engaged in providing financial services and would also include non-banking financial companies, micro finance institutions, etc. That means any person/ company involved in providing financial assistance. In the present case the respondent being a KYC Registration Agency, viz. KYC Registration Agency is merely a data collection agency, which has to collect information from people about their names, addresses, Aadhar card, etc. This is not in any way relate to financial service provider.

(iii) Every entity registered with SEBI does not automatically become a financial service provider. Respondent is merely registered under KYC category, which means they are collecting information from public about their whereabouts. It does not confer the status of financial service provider. Regulation 15 of Securities & Exchange Board of India (KYC Registration Agency) Regulations, 2011 reads that:

“Functions and obligations of the KRA 15.

The KRA has the following functions and obligations –

(a) KRA may prepare the Operating Instructions in co-ordination with other KRA(s) and issue the same to implement the requirements of these regulations.

(b) KRA(s) shall have electronic connectivity and with other KRA(s) in order to establish inter-operability among KRAs.

Explanation: Inter-operability means the ability of the KRA to determine whether the KYC documents of the client are in the custody of another KRA.

(c) KRA shall have a secure data transmission link with other KRA(s) and with each intermediary that uploads the KYC documents on its system and relies upon its data.

(d) KRA shall be responsible for storing, safeguarding and retrieving the KYC documents and submit to the Board or any other statutory authority as and when required.

(e) KRA shall retain the 1 [] KYC documents of the client, in 2 [] electronic form for the period specified by Rules, as well as ensuring that retrieval of KYC information is facilitated within stipulated time period.

(f) Any information updated about a client shall be disseminated by KRA to all intermediaries that avail of the services of the KRA in respect of that client.

(g) KRA shall ensure that the integrity of the automatic data processing systems for electronic records is maintained at all times.

(h) KRA shall take all precautions necessary to ensure that the KYC documents/records are not lost, destroyed or tampered with and that sufficient back up of electronic records is available at all times at a different place.

(i) KRA shall have adequate mechanisms for the purposes of reviewing, monitoring and evaluating its controls, systems, procedures and safeguards.

(j) KRA shall cause an audit of its controls, systems, procedures and safeguards to be carried out periodically and take corrective actions for deficiencies, if any and report to Board.

(k) KRA shall take all reasonable measures to prevent unauthorized access to its database and have audit of its systems and procedures at regular intervals as prescribed by the Board.

(l) KRA shall have checks built in its system so that an intermediary can access the information only for the clients who approach him.

(m) KRA shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued by the Board or the Central Government and for redressal of client's grievances. The compliance officer shall immediately and independently report to the Board any non-compliance observed by him.

(n) KRA shall send a letter to each client after receipt of the KYC documents from the intermediary, confirming the client's details thereof.

(o) KRA shall take adequate steps for redressal of the grievances of the clients within one month of the date of receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints from such investors."

The respondent submitted that each transaction document between the petitioner and the respondent is termed as "Inter Corporate Deposit" at the time of availing loan. Nowhere the expression 'Financial Service Provider' was used from the respondent's end.

(iv) The respondent has taken refuge under the veil of Financial Service Provider (FSP) without detailing that during the year 2019-20 and till date of maturity of each of Inter Corporate Deposits what has been the source of revenue to establish whether they operate even as ancillary to Financial Service Provider or are a corporate simplicitor.

RESPONDENT'S CONTENTION-III

Default occurred during the suspended period.

RESPONSE BY THE PETITIONER

Basing on the respondent's representation that they are in dire need of funds, the petitioner has provided Inter Corporate Deposit on 03.01.2019, 21.01.2019, 31.01.2019, 13.02.2019, 01.04.2019 and 23.05.2019 aggregating to Rs.16,00,00,000/-. The respondent defaulted in repayment on 04.01.2020, 14.02.2020, 22.01.2020, 01.02.2020, 03.04.2020 and 24.05.2020. The default having commenced from January 2020, it does not fall under the suspension period, because the default continues till date. The respondent, through its e-mail and letters had acknowledged the liability.

Even if it is assumed that the default fell during the suspended period, it cannot be considered as per section 10A of IBC. The petition meets the threshold criteria of more than Rs.1 crore.

RESPONDENT'S CONTENTION-IV:

The present petition is hit by SEBI KYC Regulations.

RESPONSE BY THE PETITIONER.

The respondent attempted to escape its obligations under the garb of SEBI (KYC) Registration Agency Regulations, 2011. Merely because the respondent is registered as a KYC Agency, it does not mean that they are providing crucial financial services.

RESPONDENT'S CONTENTION-V:

The present petition is hit by section 10A of the IBC.

RESPONSE BY THE PETITIONER.

(i) Basing on the respondent's representation that they are in dire need of funds, the petitioner has provided Inter Corporate Deposit. Out of the amount of Rs. 16 crores lent to the respondent, an amount of Rs.35 lacs has been paid. Default occurred from 04.01.2020 onwards. Thus, default having started from January 2020 it does not fall under the suspension period because the default continues till date. The respondent has acknowledged the liability by various e-mail communications. The petition meets the threshold criterion of more than Rs.1 crore.

(ii) Respondent's contention that 'last date of default' is 'date of default' for purpose of section 7 petition is untenable because each amount

is provided by a separate request letter and each amount has different payment period as per the table provided above.

RESPONDENT'S CONTENTION-VI:

Mediation Proceedings:

RESPONSE BY THE PETITIONER.

As regards mediation proceedings before the Hon'ble Delhi High Court Mediation and Conciliation Centre, it needs no reply. As regards the allegation of suppression of fact by the petitioner, the petitioner refutes that the same is false because the Company Petition has its own document.

RESPONDENT'S CONTENTION-VII:

Contradictions in Form-I.

RESPONSE BY THE PETITIONER.

Request letters and receipts provided by the petitioner clearly mentioned the rate of interest at 13% p.a. Further an additional amount of 1% was also agreed by the respondent.

7. ADDITIONAL AFFIDAVIT DATED 04.06.2022/ 06.06.2022 FILED BY THE RESPONDENT.

- (i) The respondent is (a) SEBI registered KYC Registration Agency (b) RBI registered Electronic Clearing Service (Debit) User, and (c) National Payments Corporate of India. The respondent had filed IA No.284 of 2022 seeking dismissal of the Company Petition as the respondent is neither a Corporate Person nor Corporate Debtor under IBC. Electronic Clearing Service (Debit) User Procedural Guidelines dated June 2015 (ANNEXURE-1 of this Additional Affidavit) in conjunction with Circulars issued by NPCI govern the field.
- (ii) A perusal of Electronic Clearing Service (Debit) User Procedural Guidelines dated June 2015 makes clear that Electronic Clearing Service (Debit) User provides payment service to various individuals and entities inasmuch as the User, such as the respondent herein, provides alternative method of effecting payment transactions. Thus, Electronic Clearing Service (Debit) User is a financial service provider under section 3(16)(i) of IBC for selling, providing or issuing stored value or payment instruments, etc u/s

3(16) of IBC. In view of the above the respondent squarely falls under the definition of section 3(16) of IBC.

- (iii) RBI has accepted the application of Bank of India to recognize the respondent as an Electronic Clearing Service (Debit) User through allotment of ECS (Debit) User Code to the application vide RBI letter bearing HYD/ CLH/ 1146/ 04.01.030/ 2012-13 dated 28.05.2013 (ANNEXURE-2). By virtue of such recognition by RBI, the respondent has entered into various contracts with several financial intermediaries. Copy of payment and collection management services agreement between the respondent and LIC Mutual Fund Asset Management Limited is at ANNEXURE-3.
- (iv) The respondent submitted that Electronic Clearing Service (Debit) User is providing valuable payment services to thousands of clients for more than seven years. The respondent has serviced more than 60,000 clients/ customers on monthly basis for the last one year and are handling around Rs.16 crores of clients' money on monthly basis. It is thus, clear that more than 60,000 clients/ customers deposit their money into the account of respondent, maintained with HDFC Bank and YES Bank and the respondent after due

verification disburses amount to clients. Copy of NACH Process FY 2021-22 Client Credit Data (anonymised) is at ANNEXURE-4. Extracts of Bank account statement of the respondent with HDFC Bank is at ANNEXURE-5.

- (v) It is clear that the respondent has more than 60,000 clients/customers storing and processing information and amounts for around Rs.200 crores on annual basis. Thus, respondent is clearly a payment agency and financial service provider u/s 3(16) of IBC.

8. REPLY DATED 11.07.2022/ 14.07.2022 BY THE PETITIONER/ FINANCIAL CREDITOR IN RESPONSE TO THE ADDITIONAL AFFIDAVIT DATED 04.06.2022 FILED BY THE CORPORATE DEBTOR.

- (i) It is submitted by the petitioner that the respondent claimed exemption from the proceedings under section 7 or 9 of the IB since it is a KYC Registration Agency (KRA) providing financial services as defined under section 3(16) of the IBC. Since financial service provider is excluded from the definition of a 'Corporate Person' u/s 3(7) read with section 3(8) of the IBC, the respondent argued that it is not amenable to Part-I of the Code (sections 7 and 9 petitions).
- (ii) The petitioner has drawn distinction between the statements made by the respondent in different documents as under:

Statement made in Counter Affidavit dated 31.03.2022.	“19. .. It is submitted that the respondent engages in providing KYC (Know Your Customer) services to its clients and as such engages in providing crucial financial services. It is thus submitted that as SEBI is a financial service regulator under section 3(18) of IBC and has registered the respondent as an intermediary and the respondent provides financial product in the form of providing KYC (Know Your Customer) services to its clients under section 3(15) of IBC, the respondent is a financial service provider and as such does not fall within the definition of corporate person u/s 3(8) of the Code.”
Statement made by the respondent before filing the Additional Affidavit.	Respondent is a ‘financial service provider’ only on the ground that it is KYC Registration Agency, registered under the SEBI KYC Registration Agency (KRA) Regulations, 2011.
IA No.284 of 2022 is filed for dismissal of the Company Petition stating -	Same reasoning as in the statement made in Counter Affidavit dated 31.03.2022
Statement made in Additional Affidavit dated 04.06.2022/ 06.06.2022.	Respondent claims to be an Electronic Clearing Service (Debit) User or ECS User Agency regulated by the RBI or a Financial Service Provider u/s 3(16)(i) of the Code. In support thereof respondent annexed Letter from RBI dated 28.05.2013, by which RBI has allegedly allotted ECS (Debit) User Code to the respondent.

- (iii) The petitioner stated that the Additional Affidavit suffers from material suppression and concealment. Even if it is assumed that an ECS User Agency is a financial service provider under the Code,

the respondent is still not covered by the exception carved for financial service providers since as on date, the respondent is not even a valid ECS User Agency. List of Certificates of Authorisation by the RBI under the Payment and Settlement Systems Act, 2007 for Setting up and Operating Payment System in India dated 25.05.2022 is at ANNEXURE P/1 of this Reply Affidavit. In the said list name of the respondent herein is missing.

- (iv) Section 3(17) of the IBC provides that “financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator. In absence of any such authorisation by sectoral regulator (RBI), the respondent cannot be called a Financial Service Provider.

9. BRIEF WRITTEN SUBMISSIONS DATED 25.02.2023/ 27.02.2023 FILED BY PETITIONER/ FINANCIAL CREDITOR.

- (a) To ascertain whether an entity is a ‘Financial Service Provider’ the petitioner has relied on the following definitions under the IBC, 2016:

Corporate Debtor

Section 3(8) :

“corporate debtor” means a corporate person who owes a debt to any person.”

Corporate Person
Section 3(7) :

“corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.”

Financial Service
Section 3(16) :

“financial service” includes any of the following services, namely:-

- (a) accepting of deposits;
- (b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
- (c) effecting contracts of insurance;
- (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
- (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—
 - (i) buying, selling, or subscribing to, a financial product;
 - (ii) availing a financial service; or
 - (iii) exercising any right associated with financial product or financial service;
- (f) establishing or operating an investment scheme;
- (g) maintaining or transferring records of ownership of a financial product;
- (h) underwriting the issuance or subscription of a financial product; or
- (i) selling, providing, or issuing stored value or payment instruments or providing payment services.”

Financial Service Provider

Section 3(17) :

“financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator.”

(b) To ascertain as to who can be ‘Financial Service Provider’ for the purpose of IBC, 2016, the petitioner has relied on section 227 of the IBC, which reads:

“227. Power of Central Government to notify financial sector providers etc.- Notwithstanding anything to the contrary I [contained in this Code] or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed.”

(c) On 15.11.2019, the Government has issued Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019. Said Rules are however, applicable only to the entities notified under section 227 of the IBC, 2016, wherein only NBFCs with asset aside of Rs.500 crore or more have been notified.

(d) PETITIONER'S RESPONSE TO THE ABOVE CONTENTIONS OF THE RESPONDENT.

The petitioner has answered each of the following contentions of the respondent in the following terms.

CONTENTION OF THE RESPONDENT

- The respondent is squarely covered under section 3(16) of IBC, 2016 since it performs a 'financial service'.

RESPONSE OF THE PETITIONER

Functions being carried out by the respondent as per submissions made in para 28 of Counter Affidavit dated 31.03.2022 of the respondent are:

“Services provided by KYC Registration Agencies:

28. It is submitted that KRAs provide for centralised storage/degitization of the KYC records in the securities market. The client who is desirous of opening an account/ trade/ deal with the SEBI registered Intermediary shall submit the KYC details through the KYC Registration form and supporting documents. The Intermediary shall perform the initial KYC and upload the details on the system of the KYC Registration Agency (KRA). This KYC information can be accessed by all the SEBI Registered Intermediaries while dealing with the same client. As a result, once the client has done KYC with a SEBI registered intermediary, he need not undergo the same process again with another intermediary. The core purpose of the KRA system is to obviate the need for submitting KYC documents again by an investor in the capital markets, once the same is updated in the KRA. The KRA facilities single point change management and helps to maintain

uniformity of data across intermediaries and improve compliance levels.”

- (e) It is submitted that a perusal of the above services performed by the respondent, such as, data entry, record keeping do not qualify to be a ‘financial service’ either u/s 3(6) of the IBC or as per general understanding. Thus, the respondent is essentially a KYC Data Collector for financial market, which cannot be called a financial service. The petitioner drew parallel between the services provided by the respondent to an LIC agent. Services of a SEBI KYC Registration Agency (KRA) cannot be a financial service.
- (f) Besides, under Regulation 15 of the SEBI KYC Registration Agency (KRA) Regulations, 2011, a SEBI KYC Registration Agency (KRA) is merely a data base network to assist the Financial Service Providers. Thus, KYC Registration Agency falls under the purview of IBC.
- (g) As regards the respondent’s argument that “they safeguard and administer assets consisting of financial products belonging to another person” and that they maintain/ transfer records of ownership of a financial product, said submissions are incorrect inasmuch as the respondent does not carry out functions as defined under section

3(16)(b) or section 3(16)(g) of IBC, 2016. In this regard the petitioner relied on

- AVS Narasimha Rao & others Vs. State of Andhra Pradesh & another, 1969 (1) SCC 839.
- Arun Kumar Jagatramka Vs. Jindal Steel & Power Ltd., (2021) 7 SCC 474.

CONTENTION OF THE RESPONDENT

- The respondent is registered under SEBI KYC Registration Agency (KRA) Regulations, 2011 and hence it is registered with a regulator (SEBI) in terms of section 3(17).

RESPONSE OF THE PETITIONER

- (h) The respondent has KYC Registration Agency Certificate valid upto 21.11.2017. In absence of valid certificate, the respondent is not a KYC Registration Agency. In any case, mere fact of registration under SEBI Regulations does not mean that the respondent is a Financial Service Provider.
- (j) Since the respondent is not providing financial services u/s 3(16) of the IBC, and is not covered under the exception granted to Financial

Service Provider u/s 3(8) of IBC, the respondent is amenable to jurisdiction of this Tribunal.

CONTENTION OF THE RESPONDENT

- The respondent performs a critical service in the securities market by collecting and storing sensitive information and data.

RESPONSE OF THE PETITIONER

- (k) The respondent contended that it should not be subjected to Corporate Insolvency Resolution Process as it is a systematically critical entity. This contention has no basis. There is no prohibition under IBC to initiate proceedings against entities which manage data or such allied information.
- (l) The respondent deals with flow of money of investor, so as to perform critical duties. It has no interface with public. It is merely an aggregator of data received through SEBI intermediaries. The petitioner relied on *Innoventive Industries Ltd. Vs. ICICI*, (2018) 1 SCC 407.

CONTENTION OF THE RESPONDENT

- As per the Report of the Sub-Committee of Insolvency Law Committee for Notification of Financial Service Providers u/s 227 of the IBC, 2016 vide its report dated 04.10.2019 categorically it is noted that KYC Registration Agency registered with SEBI is a financial service provider.

RESPONSE OF THE PETITIONER:

- (m) Report of the Sub-Committee of Insolvency Law Committee for Notification of Financial Service Providers u/s 227 of the IBC, 2016 vide its report dated 04.10.2019 is only advisory in character. The Committee's Report has not yet become a statute. Such a Report, in absence of the statutory force, is advisory in nature.

10. ADDITIONAL WRITTEN SUBMISSIONS DATED 04.03.2023/ 09.03.2023 FILED BY THE PETITIONER.

- (i) As regards the respondent's contention that last date of default is considered as 'date of default' for the purposes u/s 7 of the IBC, is untenable as in the present case each amount is provided by separate request letters and each amount has a different payment period.

Hence these are independent ICDs which are by their very nature separate and distinct facilities for lending.

- (ii) As regards applicability of section 10A of the IBC, the petitioner relied on order dated 24.02.2023 in CP No.310 of 2022, in the matter of IDBI Trusteeship Services Ltd. Vs. Reliance Broadcast Network Ltd. Applying the said dictum, even if it is assumed that some defaults occurred after 25.03.2020, since there were four instances of clear admitted default before the said period, each of which is above Rs.1 crore, the present petition is not hit by section 10A of the IBC.
- (iii) As regards prohibited period u/s 10A of the IBC, the petitioner relied on order of the Hon'ble NCLAT, Principal Bench in Vishal Agarwal Vs. ICICI Prudential Real Estate AIF-I, Company Appeal (AT) (Insolvency) No.1016 of 2022 dated 23.01.2023, wherein it was held that:

“7. The submission of the learned counsel for the Appellant that as per Annexure-3 clause 6, the date of repayment of instalment is 31.08.2020 only is not acceptable. There being clear admission on behalf of the Appellant in default in payment of interest for the quarters ending September 2019 and December 2019, Appellant cannot be permitted to contend that default was committed only on 31.08.2020. Insofar as application being barred by 10A, benefit

under Section 10A can be claimed by the application only when there is clear default during the prohibited period. The said benefit cannot be claimed by the Appellant by ignoring the admission of default which was prior to 25.03.2020.”

(iv) In the present case respondent’s letter dated 28.12.2019 clearly demonstrates:

- Acknowledgment of debt.
- Seeks extension of time for payment.
- Default having occurred prior to the prohibited period.
- Admission of default prior to 25.03.2020.

11.COMPREHENSIVE WRITTEN SUBMISSIONS DATED 20.04.2023/ 24.04.2023 FILED BY THE PETITIONER/ FINANCIAL CREDITOR.

(i) The Corporate Debtor has altered its case and amended its pleadings in bringing forth a new argument that it is a ECS Debit User. Counter Affidavit filed on 31.03.2022 by the Corporate Debtor does not have such an argument. This Comprehensive Written Submissions filed by the petitioner exclusively answers the respondent’s claim in respect of Electronic Clearing Service (Credit) Procedural Guidelines, 2015.

(ii)The Corporate Debtor is not accepting any deposits and not providing any financial service under the Code.

(iii) The respondent’s claim that it is an ECS (Debit) User and is providing ‘payment service’ under section 3(16)(i) of the Code is

unsustainable as explained in paras 60, 61, 62, 63 and 64 of the Comprehensive Written Submissions, which are taken note of. On the basis of such arguments in the above paras the petitioner submits that it can be seen that it is the sponsor bank, destination bank, the clearing agency which perform financial services and the ECS User is a beneficiary. The Corporate Debtor is not providing the payment service in the ECS Scheme. Payment service is provided by banks/ RBI and NPCI/ National Clearing House/ Clearing Cell.

- (iv) The petitioner having relied on Rules 3(i), 5(i), 5(ii), 5(iv), 5(xi), 5(xii), 5(xiv), and 5(xvi) of the Electronic Clearing Service (Credit) Procedural Guidelines, 2015, has summarised its contentions as under:
- (a) Mere allotment of a User Code is not indicative of the Corporate Debtor being a Financial Service Provider or even being regulated fully by a Financial Sector Regulator. In fact, under the ECS Regulations under which the Corporate Debtor obtained its User Code, the Corporate Debtor had to apply to the sponsor bank and not the RBI for obtaining a user code.
- (b) The functions of the Corporate Debtor are limited to ensuring the accuracy of the input data as well as issuance of payment advised to

the beneficiaries. It is in fact the National Clearing Corporation/
Clearing House which would be processing the data and clearing the
settlement based on the data.

(c) In view of the above the Corporate Debtor does not fulfil the dual
requirements of being a Financial Service Provider nor being
regulated by a financial sector regulator.

(v) The petitioner refutes the respondent's claim that it is providing
payment services under section 3(16)(i) of the IBC. The petitioner
relies on definition of 'payment system' under Payment and Settlement
Systems Act, 2007, which reads:

Section 21(i):

*“2(i) “payment system” means a system that enables payment to
be effected between a payer and a beneficiary, involving clearing,
payment or settlement service or all of them, but does not include a
stock exchange.”*

The petitioner contends that none of the limbs are being provided by the
Corporate Debtor inasmuch as the clearing and settlement service is
conducted by the NCC/ NPCI/ Clearing House/ Clearing Agency, whereas
payment is made by the above mentioned institutions, in conjunction with
the Sponsor and Destination Banks. Use only issues instructions, provides

information of beneficiaries, provides information of beneficiaries and routes the money.

(vi) The petitioner submits that for the above reason name of the Corporate Debtor is not found in the list of entities authorized under the Payment and Settlement Systems Act, 2007. Thus, the Corporate Debtor is not a recognized entity which has authorization under the Payment and Settlement Systems Act, 2007.

(vii) The petitioner has lastly relied on section 4 of the Payment and Settlement Systems Act, 2007, which reads:

Section 4:

“4. Payment system not to operate without authorisation.—(1) No person, other than the Reserve Bank, shall commence or operate a payment system except under and in accordance with an authorisation issued by the Reserve Bank under the provisions of this Act.”

The petitioner submits that in view of the above provisions it becomes clear that the Corporate Debtor is not providing pay service under section 3(16)(i) of the IBC, 2016.

12. WRITTEN SUBMISSIONS DATED 22.04.2023/ 24.05.2023 FILED BY THE RESPONDENT/ CORPORATE DEBTOR.

The submissions made by the Corporate Debtor in this Written Submissions are reiteration of what has been stated in its Additional Affidavit dated 04.06.2022 filed by the Corporate Debtor. Such submissions are however, summarised hereinafter.

(i) It is contended that the extent and manner of applicability of IBC should be specifically notified by the Central Government u/s 227 of the Code. In support of this contention the Corporate Debtor has relied on:

- Union of India in Union of India Vs. Infrastructure Leasing and Financial Services Limited, MANU/ ND/ 9316/ 2018.
- Rayappa Chinnuswamy Vs. HNS Chits Private Limited, 2019 SCC OnLine NCLT 28618 (NCLT, Chennai Bench).

In view of the above decisions the IBC is not applicable to Financial Service Providers unless the Central Government notifies in this regard u/s 227 of the IBC.

(ii) The Corporate Debtor has recapitulated the activities of Financial Service Providers as under:

- KYC Registration Agencies are FSCs and they are regulated under SEBI KRA Regulations. They are FSC under IBC, 2016.
- KYC Registration Agencies provide Financial Services under section 3(17) of IBC [sic., section 3(16) of IBC]
- KYC Registration Agencies being safeguard and administer assets consisting of financial products belong to another person.
- KYC Registration Agencies offer, manage assets of financial products belonging to another person through their KYC validation services.
- The respondent conducts critical business in financial sector on day to day basis involving data handling of lacs of customers across India.

In view of the above activities of the respondent only upon notification by Central Government KYC Registration Agencies (KRAs) be guided by the Financial Service Provider Regulations, 2019 rather than subjecting the Corporate Debtor to Corporate Insolvency Resolution Process. If the Corporate Debtor is admitted into Corporate Insolvency Resolution Process, the Resolution Professional cannot handle sensitive data of lacs of customers. Thus, the Corporate Debtor comes under definition of

Financial Service Provider u/s 3(16) of the IBC for providing financial services u/s 3(17) of IBC.

(iv) Decisions relied on by the petitioner have no validity as explained hereunder:

Decision relied on by the petitioner/ Financial Creditor.	It has no validity because.
Apeejay Trust Vs. Aviva Life Insurance Co. India Limited, CP (IB) No.1885 (ND) 2019, as decided by the NCLT, New Delhi, whereby the Tribunal rejected the claim of the Corporate Debtor that it is a Financial Service Provider and admitted the Company Petition.	Said matter has been settled outside the Court and was disposed of as settled.
Jindal Saxena Financial Services Private Limited Vs. Mayfair Capital Private Limited, 2018 SCC OnLine NCLT 93, as decided by NCLT, New Delhi.	Said decision was set aside by the Hon'ble NCLAT in Randhiraj Thakur Vs. Jindal Saxena Financial Services Private Limited, 2018 SCC OnLine NCLAT 506.

(v) The respondent/ Corporate Debtor has relied on the Report of the Sub-Committee of Insolvency Law Committee for Notification of Financial Service Providers u/s 227 of the IBC, 2016 vide its report dated 04.10.2019, a copy of which is enclosed as ANNEXURE A/4, page 49 of the Counter Affidavit. The Committee's Report has not yet become

a statute. Such a Report, in absence of the statutory force, is advisory in nature. Such a Report may have value of guidelines or recommendations, as the same has not been framed under any Statute or provision of the Constitution of India. In order to overcome such a limitation the respondent/ Corporate Debtor has relied on the following decisions:

- B. Prabhakar Rao Vs. State of Andhra Pradesh, 1985 (Supp.) SCC 432. (paras 7 and 8).
- R.S. Nayak Vs. A.R. Antulay, (1984) 2 SCC 183.
- Arcellormittal India Private Limited Vs. Satish Kumar Gupta & others, (2019) 11 SCC 1.
- Air Force Group Insurance Society and others Vs. R. Subramaniakumar, Administrator of Dewal Housing Finance Corporation Limited & others, MANU/ NL/ 0080/ 2022, has followed the recommendations of the Sub-Committee of Insolvency Law Committee for Notification of Financial Service Providers u/s 227 of the IBC, 2016 vide its report dated 04.10.2019

By virtue of the above decisions the respondent submits that this Tribunal ought to give credence to the recommendations of the Sub-Committee dated 04.10.2019.

(vi) It is further submitted by the respondent that KYC Registration Agencies are heavily regulated and are always under the protective supervision of SEBI. KYC Registration Agencies are regulated

under SEBI KRA Regulations and SEBI (Intermediaries) Regulations, 2008 as KYC Registration Agencies.

(vii) Regulation 10 read with Schedule-III of SEBI KRA Regulations provide for a detailed code of conduct to be followed by KYC Registration Agencies.

(viii) The respondent contended that definition of financial services under section 3(17) of the IBC is inclusive in nature and relied on the following decisions:

- Indian Young Lawyers Assn (Sabarimala Temple) 5J) Vs. State of Kerala, (2019) 11 SCC 1.
- Jaypee Infratech Ltd. Interim Resolution Professional Vs. Axis Bank Ltd., (2020) 8 SCC 401.
- Hamdard (Wakf) Laboratories Vs. Dy Labour Commr., (2007) 5 SCC 281.
- P. Kasilinga Vs. PGS College of Technology, (1995) Supp. (2) SCC 348.

(ix) The respondent submitted that Memorandum of Association (MoA) and Articles of Association (AoA) reveal that:

- Respondent was incorporated to provide financial services as defined u/s 3(17) of IBC and that the respondent provides financial services u/s 3(17) of the IBC including services under Payments and Settlement Systems Act, 2007.
- To Act as GST Suvidha Provider.

- Right to apply for stock exchanges, depositories, etc.

The respondent/ Corporate Debtor relied on and extracted at page 17 (para 41 of the Written Submissions) Clause (C) of Memorandum of Association, which provides wide range of financial services, to prove that the respondent is a financial service provider u/s 3(16) of the IBC providing financial services u/s 3(17) of the IBC. Said Clause (C) of MoA, is part of EXHIBIT-2 of this Written Submission.

- (x) The respondent submitted that it is a Reserve Bank of India regulated and registered Electronic Clearing Service (Debit) User. RBI through Department of Payment and Settlement Systems has issued ECS (Debit) Procedural Guidelines, 2015, which governs ECS (Debit) Procedures.
- (xi) The Corporate Debtor has explained in detail what is the Board for Regulation and Supervision of Payment and Settlement Systems (BPSS) and also relied on Rules 3(i) and 4(iv) of ECS (Debit) Rules and section 3(16) of the IBC, and submitted that the respondent being an authorised User holding ECS (Debit) User Code issued by RBI is providing payment services even for the purpose of Payment and Settlements Act, 2007. Copy of Electronic Clearing Service

(Debit) User Procedural Guidelines dated June 2015 are filed at Exhibit-3 of this Written Submissions.

- (xii) It is submitted that National Payments Corporation of India has been authorized by RBI under Payment and Settlement Systems Act, 2007 (Copy is at Exhibit-4) for setting up and operating payment system in India, wherein one of the payment system authorized is National Automatic Clearing House (NACH).
- (xiii) The respondent has further submitted that as per Rule 3(ix) of the Electronic Clearing Service (Debit) User Procedural Guidelines of June, 2015, NACH (Debit) refers to a form of ECS (Debit) operated by National Payment Corporation of India. Thus, the respondent being an authorised ECS (Debit) User is also an authorised payment system providing NACH (Debit) Services for the purpose of interpretation of Payment & Settlement Systems Act, 2007.
- (xiv) The respondent relied on the following decisions to contend that this petition is not maintainable.
- Vidarbha Industries Power Limited Vs. Axis Bank Limited, 2022 SCC OnLine SC 841.
The respondent is a Financial Service Provider. It is not a corporate person and it does not come in the purview of the IBC.

- Vidarbha Industries Power Ltd Vs. Axis Bank Ltd.,
Even the asset of the applicant (sic.) is evidence enough to understand the respondent is not insolvent and the present application ought not to be admitted.

13. MEMO DATED 24.05.2023 FILED BY THE RESPONDENT/ CORPORATE DEBTOR.

The respondent/ Corporate Debtor contended that the petitioner/ Financial Creditor did not fulfil the condition laid down in letter dated 03.04.2023 issued by the NCLT, New Delhi, which is reproduced hereunder:

“It is brought to the attention of all stakeholders that Regulation 20(1A) has been inserted in the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 vide Notification No. IBBI/2022-23/GN/REG085, dated 14th June, 2022. It reads as follows:

“20. Acceptance and receipt of information.

[(A) (Before filing an application to initiate corporate insolvency resolution process under section 7 or 9, as the case may be, the creditor shall file the information of default, with the information utility and the information utility shall process the information for the purpose of issuing record of default in accordance with regulation 21.”

2. In view of the aforesaid, all the Petitioner(s) of section 7 and 9 under the Insolvency and Bankruptcy Code, 2016 are requested to comply with the above Regulations and produce the record of Information Utility (NeSL certificate) at the earliest for effective hearing of their cases.

This issues with the approval of Hon’ble President, NCLT.”

Hence the respondent/ Corporate Debtor contends that in non-compliance of the above provision this petition is required to be dismissed.”

14. Heard Shri S. Ravi, learned senior counsel appearing with Shri Laxmikanth Reddy, learned advocate for the petitioner; and heard Shri Avinash Desai, learned senior counsel appearing with Ms. Mrudhula Sarampally, learned advocate for the respondent. Perused the documents.

After hearing the learned counsels for both the sides and after perusal of the records submitted to this Tribunal, following issues arise for our consideration:

ISSUES:

- (1) Whether there exists a debt of a sum over Rs.1 crore due and payable by the Corporate Debtor? If so, whether the Corporate Debtor has defaulted in repayment of the same?**
- (2) Whether the petition attracts section 10A of the Insolvency & Bankruptcy Code, 2016?**
- (3) Whether the judgement of the Hon'ble Supreme Court of India in Vidarbha Industries Power Limited Vs. Axis Bank Limited, 2022 LiveLaw (SC) 587 is applicable to the instant case?**
- (4) Whether the respondent is a Financial Service Provider as claimed by it and thus excluded from Corporate Person as defined in Section 3(7) of IBC, 2016 and therefore, Corporate Insolvency Resolution Process (Chapter -II) is not applicable to it ?**

15. Our findings and observations on these issues are as under:

Issue No.(1) :Whether there exists a debt of a sum over Rs.1 crore due and payable by the Corporate Debtor? If so, whether the Corporate Debtor has defaulted in repayment of the same?

We observe that the petitioner has provided sufficient proof and documents regarding issuance of Inter Corporate Deposits (ICDs) of Rs.16,00,00,000/- to the respondent. In order to prove the debt given to the respondent, the petitioner has submitted (i) request letters given by the respondent for issuing these ICDs, (ii) acknowledgement receipts of the ICDs by Corporate Debtor, (iii) post-dated cheques (all of which bounced back on due dates), and (iv) Demand Promissory Notes (DP Notes). Details of these ICDs as provided at page 7 of the Company Petition are as under:

S. No.	Request Letter Date	ICD Amount in crores of Rs.	Mode	UTR No.	Dates of default
1	03.01.19	03	RTGS	CORPR22019010300602934	04.01.2020
2	13.02.19	02	RTGS	KKBKR52019021300731583	14.02.2020
3	21.01.19	02	RTGS	KKBKR52019012100770806	22.01.2020
4	31.01.19	03	RTGS	KKBKR52019013100816140	01.02.2020
5	02.04.19	01	RTGS	KKBKR52019040200894116	03.04.2020
6	23.05.19	05	RTGS	KKBKR52019052300895815	24.05.2020
Total		16	(Rupees sixteen crores only)		

As the respondent was not in a condition to repay the ICDs on due dates, so before the due date, on 28.12.2019 (first ICD fell due on 04.01.2020), the respondent issued letter to the petitioner requesting extension of time. Relevant portion of the said letter addressed by the respondent is reproduced hereunder:

“ We assure you that we shall be in a position to repay the ICDs taken from you which are already due or maturing before 15th Mar, 2020 along with interest by 15th March 2020 and shall also ensure that the repayments of dues to you are done on priority basis. We therefore request you to kindly extend the ICDs from the existing due date till 15th March 2020.

We would also like to inform that we hereby agree to pay an additional interest of 1% p.a. over and above the existing interest rate on these ICDs for the extended period till actual repayment i.e. from the current due date till the date of actual repayment or 15th Marach 2020, whichever is earlier. With regard to existing ICDs which shall be maturing after 15th Mar, 2020 we shall arrange for their repayment on as per existing rate of interest only on or before their actual maturity date.”

The respondent could not repay the ICDs on extended due date also and a per-litigation petition being Mediation Petition No.03/ 2020 was filed before the Hon’ble Delhi High Court Mediation and Conciliation Centre, Delhi High Court, Sher Shah Road, New Delhi, wherein Conciliated Agreement dated 23.11.2021 was arrived at between the parties agreeing for a revised repayment schedule and

interest rates. A copy of said Conciliated Agreement dated 23.11.2021 is at page 120 of the Company Petition.

Thereafter, this Company Petition was filed on account of failure in complying with the Conciliated Agreement. The petitioner has raised a claim of Rs.18,62,96,663/-, as on 31.12.2021, the break up of which is as under:

• Principal amount	..	15,65,00,000
• Interest amount	..	02,40,63,164
• Total	..	18,05,63,164
• Interest @ 19% for Nov and Dec 2021	..	00,57,33,499
• Total amount claimed in default	..	18,62,96,663

The date of default for each tranche of ICD is different, namely, the respondent/ Corporate Debtor had defaulted in payments which fell due one year after each Inter Corporate Deposit, viz. on 04.01.2020, 14.02.2020, 22.01.2020, 01.02.2020, 03.04.2020 and 24.05.2020, as was mentioned in the above table.

The respondent has not challenged all these facts proving existence of debt and default in their counter and keeping in view that petitioner has submitted necessary documents and proof to establish the debt and default, we are of the opinion that the answer to Issue No.1 is in affirmative.

Therefore, we conclude that there exists a debt of a sum over Rs.1 crore due and payable by the Corporate Debtor and that the Corporate Debtor has defaulted in repayment of the same.

Issue No.2 :Whether the petition attracts section 10A of the Insolvency & Bankruptcy Code, 2016?

On perusal of the dates of default of different tranches of ICDs ,we observe that tranches 5 and 6 fell due on 03.04.2020 and 24.05.2020, which would attract provisions of section 10A of the IBC, 2016, because both these dates fall during the period when initiation of Corporate Insolvency Resolution Process (CIRP) remained suspended by virtue of section 10A of the IBC, 2016. But , dates of default of other ICDs being prior to 25.03.2020 , Section 10A will not be applicable to these 4 trenches of ICds. Section 10A has been inserted vide ,The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, No.17 of 2020. Said provision is reproduced hereunder:

“10A. Suspension of Initiation of corporate insolvency resolution process.

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

The explanation provided at the end of section 10A amply clarifies that this section shall not apply to any default committed under the said section before 25.03.2020. Therefore, on the basis of the explanation given in section 10A of the IBC, 2016, we conclude that the default committed in repayment of first four tranches, aggregating to an amount of Rs.10 crores plus interest thereon does not attract the provisions of section 10A of the IBC, 2016. Therefore, the petition is not barred by the provisions of section 10A of the IBC, 2016, as pleaded by the respondent/ corporate debtor . Therefore, our answer to Issue No.2 is in negative holding that the petition is not attracting the provisions of section 10A of IBC, 2016, because the amount which is falling due for payment before section 10A of IBC, 2016 coming into force is much beyond the threshold limit of Rs.1 crore.

Issue No.3 :Whether the judgement of the Hon’ble Supreme Court of India in Vidarbha Industries Power Limited Vs. Axis Bank Limited, 2022 LiveLaw (SC) 587 is applicable to the instant case?

Respondent has not relied upon the judgment of the Hon'ble Supreme Court of India in Vidarbha Industries Power Limited Vs. Axis Bank Limited, 2022 LiveLaw (SC) 587 in the Counter filed on 31.03.2022 but thereafter, through oral arguments and also through Written Statement filed on 24.05.2023 (paras 68 to 75) this issue was raised by respondent/corporate debtor. Though, the respondent has raised this issue, it has failed to submit any corroborating evidence or facts suggesting that the Corporate Debtor is expecting some cash flow in the near future through any arbitration order or through any other source which will be able to liquidate the debt amount due and payable.

Furthermore, the Hon'ble Supreme Court of India in its judgment in M. Suresh Kumar Reddy Vs. Canara Bank, Civil Appeal No.7121 of 2022 dated 11.05.2023 has held that:

“13. Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries and E.S. Krishnamurthy. The view taken in the case of Innoventive Industries still holds good.”

Therefore, placing reliance on the above said judgement of Hon'ble Supreme Court of India and in the absence of any reliable and concrete

proof of any cash flow accruing to the corporate debtor , the judgement in Innoventive Industries holds good in the present case , which clearly says,

“the moment when 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 of receipt of a notice from the adjudicating authority.”

Therefore, we conclude that the ratio laid down by the Hon’ble Supreme Court of India in Vidarbha Industries Power Limited (supra) does not apply to the present case in as much as , the circumstances are different. Hence, we answer issue no 3 in negative.

Issue No.4: Whether the respondent is a Financial Service Provider as claimed by it and thus excluded from Corporate Person as defined in Section 3(7) of IBC, 2016 and therefore, Corporate Insolvency Resolution Process (Chapter -II) is not applicable to it ?

(I) The petitioner has filed this Company Petition under section 7 of the IBC, 2016, under Part-II of the Code, viz. Insolvency Resolution and Liquidation for Corporate Persons, but the Corporate Debtor contends that it is excluded from the purview of Part-II of the IBC, 2016, being a “Financial Service Provider”. To prove its point of view, respondent placed before us its Memorandum and Association listing its activities and

claims that two of its activities i.e KRA and ECS Debit user place it under “Financial Service Provider”.

(II) To conclude whether the aforesaid two activities come under the category of Financial Service Provider or not, we have first delve deep into the the legal position as per IBC, 2016 in this matter. It is pertinent to refer to following relevant definitions of IBC, 2016, to have a clear understanding of the issue involved ,

- **Section 3(7)**

“corporate person” means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider.”

- **Section 3(15)**

“financial product means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed.”

- **Section 3(16)**

“ ‘financial service’ includes any of the following services, namely:

—

(a) accepting of deposits;

(b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;

- (c) *effecting contracts of insurance;*
- (d) *offering, managing or agreeing to manage assets consisting of financial products belonging to another person;*
- (e) *rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—*
 - (i) *buying, selling, or subscribing to, a financial product;*
 - (ii) *availing a financial service; or*
 - (iii) *exercising any right associated with financial product or financial service;*
- (f) *establishing or operating an investment scheme;*
- (g) *maintaining or transferring records of ownership of a financial product;*
- (h) *underwriting the issuance or subscription of a financial product;*
or
- (i) *selling, providing, or issuing stored value or payment instruments or providing payment services;”*

- **Section 3(17)**

“financial service provider” means a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator;”

(III) The present application has been filed by Financial creditor treating him Corporate Debtor under Chapter-II - Corporate Insolvency Resolution Process. Corporate Debtor has been defined U/S 3(8) of IBC, 2016 as a Corporate Person who owes a debt to any person. Respondent has not raised any contention about owing a debt to petitioner but its contention is that it is not a Corporate Person as defined U/S 3(7) of IBC, 2016 as definition of Corporate Person excludes any financial service provider (-----*but shall not include any financial service provider---*) and it being a Financial Service Provider is not a corporate person as per the

Code. To further examine who are covered under Financial Service Provider, we see Section 3(17) which defines Financial Service Provider as a person engaged in the business of providing financial services in terms of authorisation issued or registration granted by a financial sector regulator. According to this definition any person to qualify as FSP must have two ingredients (1) Must be providing financial services and (2) Must have a authorization or registration from a financial sector regulator. Now, the moot question before us is what are financial services. Section 3(16) of IBC, 2016 defines Financial services and put them in 9 categories (sub sections a,b,c,d,e,f,g,h,i). Respondent in his oral submission and written submission dated 24.05.2023 has claimed that on account of the fact that respondent is providing KRA services it falls under **Section 3(16) (b) : *safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so*** (para 7 of WS) and **3(16) e : *exercising any right associated with financial product or financial service*** (Para 17 of WS) : and on account of Respondent providing ECS debit service user it is covered under **3(16) i** of the Code. If we carefully study all the 9 sub clauses of Section 3 (16) ,we find that sub sections (a) & (i) of financial services directly deal with money/digital money and the other 7 sub sections deals with services pertaining

to “financial products” as defined U/S 3(15). Section 3(15) defines financial products as securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed. We observe from the definition of financial product that common thread in all these financial products defined in the section is that they can be defined and expressed in monetary value. To further clarify on the issue let us understand that when a bank accepts deposit, section (3) (16) (a) , money changes hands from customer to bank , same way in all payment services, section (3) (16) (i) either through prepaid instruments or through digital channel the money changes hands from the payer to receiver and vice versa and the intermediary who facilitate all this change of hands of money and money like instruments are financial service providers like banks, Card Payment Network, ATM Network, Prepaid Instruments, Instant Money Transfer services, TReDS, BBPS etc .

Section 3(16) b & Section 3(16) e which respondent claim to be applicable in his case are for financial products and 3(16) i which also

respondent submits is applicable to him is for payment services dealing with money or money like instruments. If we analyse the services provided by respondent as KRA and ECS debit user service, we find that services provided by respondent are basically dealing with data and information only and not with money or money like instruments and also not with financial products as discussed above. Even respondent in his written submission has admitted this fact that they are handling with data, relevant excerpts from para 15 of written submission are reproduced below:

“15. It is further pertinent to note that KDMSL conducts critical business in the financial sector on a day-to-day basis. It involves handling of data pertaining to lakhs of customers across India, conducting large number of monetary transactions every day, in accordance with the regulations issued by the Reserve Bank of India.”

(IV) Therefore, on the touch stone of above legal framework of financial services as defined in the Code , the services provided by respondent do not pass the test for being classified as financial services. In view of the above points as discussed above , we conclude that the services provided by respondent/ corporate debtor do not fit in the definition of financial service provider in terms of the definition of financial service provider as per IBC, 2016.

(V) Respondent further submitted that even if its services do not fall under the classification of financial services under sub-section of section 3(17) it is eligible to be treated as financial service provider under the larger basket of financial services (**Para 39 of the WS**). In Para 15 of written submission respondent has submitted that:

*“37. .. that definition of financial services in Section 3(17) being inclusive in nature, i.e. usage of only **includes** in defining financial services, the classification of financial services provided under sub-section is only enumerative and not exhaustive.”*

Hon,ble NCLAT Delhi has also taken the same view in COMPANY APPEAL (AT)(INSOLVENCY) NO.26 OF 2019 , Housing Development Finance ... vs Rhc Holding Pvt. Ltd . The relevant part of the order is reproduced below:

“Para 12. The definition of 'financial services' as defined in Section 3(16) of I&B Code is not limited to the 9 activities as shown at Clause (a) to (i) of Section 3(16). The aforesaid Clauses (a) to (i) are inclusive which means there are other services means there are other services which come within the meaning of "financial services".

In the above backdrop , we have further examined that whether respondent can be classified as financial service provider on the basis of inclusive definition of financial services . We find that respondent, on this point has corroborated it,s pleadings mainly relying on (a) The activities it carries in the financial markets (b) Report of the Sub-Committee of Insolvency Law Committee for Notification of Financial Service Providers u/s 227 of the IBC, 2016 dated 04.10.2019 and (c) ECS debit user facility arrangement with Bank of India . We have made a thorough analysis on

all these aspects before arriving a final conclusion on this issue. Our findings and observations on each point are as under:

(a) The activities it carries in the financial markets

Whether or not the Corporate Debtor is a Financial Service Provider as per activities it carries , we examined the main objects for which the Corporate Debtor was established . We have perused the Memorandum of Association of the company filed at Annexure-11, page 128-265 of the Company Petition, and Comparative Table of the Unamended Memorandum of Association and the Amended Memorandum of Association filed at Exhibit-2 of the Written Submissions dated 22.04.2023/ 24.05.2023 by the Corporate Debtor and we find that the main objects of the incorporation of this company were to carry on business of various types of data management and consultancy services. This is very clear by reading the main objects of incorporation of the company from serial no.A(1) to A(8) and also incidental or ancillary objects from B(1) to B(56). Amended Memorandum of Association filed at Exhibit-2 of the Written Submissions dated 22.04.2023/ 24.05.2023 by the Corporate Debtor also contained almost the same type of activity in a more detailed manner. As per records of the Ministry of Corporate Affairs also Karvy Data Management Services Limited (KDMSL)/ petitioner herein is

involved in activities, such as, computer and related activities. The website of KDMSL also states that KDMSL is a leading provider of integrated business and knowledge process services to clients. Precisely, as per the main objects of the company as defined in Object (A/1), the company carries on business of Data Management for various business houses including Banks, Financial Institutions etc. The object of the company as referred to above vide Object A/1 is reproduced below:

“(A) The main objects to be pursued by the company on its incorporation are:

- 1. To carry on the business of collecting, collating, classifying, segregating, processing, profiling of various types of data for providing services including providing business correspondent services to various banks, financial institutions, business houses, commercial and non-commercial organisations, individuals and other entities including the business houses engaged in providing financial services, capital market activities, wealth management, insurance and retail business activities, consumer utility services, various human resource processes including pay roll processes and knowledge management services both in India as well as overseas.”*

On perusal of the above, it is very clear that the Corporate Debtor was established for the purpose of providing data management and support services through IT platform to various business houses including banks and financial institutions. In pursuance of its objectives, Corporate Debtor is providing support services for managing ECS service etc and providing services such as KYC Registration Agency (KRA), to the Financial Service Providers and Banks through its IT Enabled Services or Data

Management Services but the role of servicing or role of providing back end services to the banks and 'Financial Service Providers' does not entitle the Corporate Debtor to be classified itself as 'Financial Service Provider'. Therefore , we conclude that Respondent/ corporate debtor can not be classified as financial service provider on the basis of activities it is pursuing in the financial market.

(b) Report of the Sub-Committee of Insolvency Law Committee for Notification of Financial Service Providers u/s 227 of the IBC, 2016 dated 04.10.2019

To support its contention that its services as KYC Registration Agency (KRA), be treated as a financial Service, the Corporate Debtor / respondent has relied heavily on the Report of the Sub-Committee of Insolvency Law Committee for Notification of Financial Service Providers u/s 227 of the IBC, 2016 dated 04.10.2019 (Annexure R/4, page 42 of Counter Affidavit dated 31.03.2022 of the respondent). The Corporate Debtor contends that since this report recommends to include KYC Registration Agency as Financial Service Provider, the Corporate Debtor should be treated as Financial Service Provider .

The above referred Committee has given a report in the year 2019 to the Central Government for notification of activities as Financial Service

Providers u/s 227 of the IBC, 2016. For reference, Section 227 of the IBC

is reproduced below:

“227. Power of Central Government to notify financial sector providers etc.- Notwithstanding anything to the contrary 1 [contained in this Code] or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed.”

The petitioner has contended that Committee’s Report dated 04.10.2019 is only recommendatory in nature as Government has not notified the activities as recommended by the said report including the activity of KYC Registration Agency (KRA), as “Financial Service Provider” under Section 227. The Central Government till now has notified only one activity i.e NBFCs with asset aside of Rs.500 crore or more under section 227 . Therefore, the recommendations of this report in absence of notification by Central Government under Section 227 of IBC, 2016 have no statutory force and is only advisory in nature.

Even if we study the report from that angel of advisory nature also , some important excerpts taken from the report are worth noting and they are reproduced as under:

“ The rationale behind the exclusion of FSPs from the purview of the IBC is that financial firms are different from other firms. Compared to other firms which mostly rely on equity and debt, many FSPs handle large amounts of consumers’ money. Moreover, some of them are systemically important as their failure might disrupt the financial system and have an adverse effect on the economy. The Committee to Draft Code on Resolution of Financial Firms (2016) had noted as follows:

“Standard insolvency and bankruptcy processes are usually not considered suitable for financial firms, particularly for those that handle consumer funds and those considered to be of systemic significance. Further such processes, even if they are efficient, tend to drag on for longer periods of time than are acceptable for instances of financial firm failure, exacerbating the threats to consumer funds and systemic stability. Also, the fear of a financial firm going into a long-winded process may trigger “runs” on these firms even when they have not really failed. Hence, it is important to have a credible resolution regime under an expert statutory institution that is able to ensure efficient, orderly and fair resolution of financial firms.”

“Only certain financial firms that do not handle consumers’ money and do not pose systemic risk may be covered under the Insolvency and Bankruptcy Code, as the rationale for covering under a specialised resolution regime does not apply to such firms.”

“2. ----- from the perspective of insolvency resolution, there are three classes of financial service providers (FSPs), namely, **(a)** FSP, whose business and regulation are not different from that of a corporate sector, can be resolved under the Insolvency and Bankruptcy Code, 2016 (Code) as it is; **(b)** FSPs, whose business and regulation are fairly different from that of a corporate debtor, can be resolved under the Code with certain modifications; and **(c)** FSPs, whose business and regulation are substantially different from that of a corporate debtor, need to be resolved outside the Code. -----.”

The Committee after discussing the rationale for having a separate regime of insolvency process for FSP defines that some more services may be included in financial services and they may be classified in three categories namely : **category (a) - whose business and regulation are not different from that of a corporate sector, can be resolved under the Insolvency and Bankruptcy Code, 2016 (Code) as it is** **Category (b)-FSPs, whose business and regulation are fairly different from that of a corporate debtor, can be resolved under the Code with certain modifications** and **category(c) - FSPs, whose business and regulation are substantially different from that of a corporate debtor, need to be resolved outside the Code. -----.”**

Accordingly, the committee classified the recommended / proposed FSPs into three categories and the scanned copy of the relevant page of the

Report of the Sub-Committee classifying KYC Registration Agency in category (a) is produced below:

Regulator	Applicability of IBC		
	IBC, as It Is	IBC with Modifications	Outside IBC
1	2	3	4
RBI	<ol style="list-style-type: none"> 1. NBFCs (Peer to Peer) 2. NBFCs (Account Aggregators) 	<ol style="list-style-type: none"> 1. NBFCs and HFCs (Other than those stated in Columns 2 & 4) 2. Payment System Operators (Not Systemically Important) 	<ol style="list-style-type: none"> 1. Banks 2. NBFCs and HFC (Systemically Important and/or Deposit Taking) 3. Systemically Important Payment
SEBI	<ol style="list-style-type: none"> 1. Merchant Bankers 2. Registrars to Issue 3. <u>KYC Reclstration Agencies</u> 4. 'Under-writers 5. Credit Rating Agencies 6. Investment Advisers 7. Research Analysts 8. Share Transfer Agents 9. Portfolio Managers 10. Managers of Alternate Investment Funds and Real Estate Investment Trusts 11. Investment Managers of Infrastructure Investment Trusts 	<ol style="list-style-type: none"> 1. Stock-Brokers 2. Sub-Brokers 3. Debenture Trustees 4. Depository Participants 5. Bankers to an Issue 6. Asset Management Companies & Trustees and Sponsors of Mutual Fund 7. Sponsors and Trustees of Venture Capital Funds 8. Alternate Investment Funds & Sponsors and Trustees of AIFs 9. Sponsors and Trustees of 	FMI
IRDAI	<ol style="list-style-type: none"> 1. Corporate Surveyors 2. TPAs 3. Web Aggregators 	Brokers	Insurance Companies

PFRDA	<ol style="list-style-type: none"> 1. Retirement Advisors 2. Points of Presence Aggregators 	Pension Funds	<ol style="list-style-type: none"> 1. NPS Trusts 2. Trustee Banks 3. Annuity Service Providers 4. Custodian of Securities 5. Central Record Keeping Agencies
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The Committee basing on the activities of KYC Registration Agency (KRA) has classified respondent/ corporate debtor under the category (a) only, where IBC as it is applicable. The activities of KYC Registration Agency (KRA), are basically collection of KYC records of individuals, store them and make available to users on demand and it does not deal with consumers' money therefore, as per recommendation of the committee specialized resolution regime does not apply to KRAs .

We conclude that firstly this report is only recommendatory in nature and does not have force of any statute behind it and secondly for guidance purpose also if we take into consideration the above said report in its entirety, the respondent's reliance on the Report of the Sub-Committee, goes against it and support the contention of Financial Creditor that

corporate insolvency resolution process can be initiated against the Corporate Debtor.

(c) ECS debit user facility .

The respondent submitted that it is providing ECS debit user facility , therefore it should be considered as payment system operator and thus treated as financial service provider. The petitioner argued that to become a payment service provider Corporate Debtor need to have a licence from RBI, which it does not have and its name also does not appear in the list of Payment System Operators as per RBI . We find that the respondent/ Corporate Debtor has some arrangement for facilitating ECS services of some Banks, LIC, Mutual Funds, etc., but Corporate Debtor itself is not Payment System Operators and it does not has any licence from RBI. The respondent/ Corporate Debtor has contended that because the Corporate Debtor is an authorised Electronic Clearing Service (Debit) User, it is also an authorised Payment System Provider for the purpose of interpretation of the Payment and Settlement Systems Act, 2007. Payment and Settlement Systems Act, 2007 designates RBI as authority for making regulations, etc. for that purpose and Chapter III of Payment and Settlement Systems Act, 2007 is reproduced below :

“Chapter-III. Authorisation of Payment Systems.

3. *Payment system not to operate without authorisation. – (1) No person, other than the Reserve Bank, shall commence or operate a payment system except under and in accordance with an authorisation issued by the Reserve Bank under the provisions of this Act.”*

RBI has published a very exhaustive List of Payment System Operators authorized by it which consists of different activities authorised by the RBI. There are nine main categories as under:

Sl. No.	Activity	Name of the authorised entity
1	Financial Market Infrastructure	The Clearing Corporate of India Ltd.
2.	Retail Payments Organisation.	National Payments Corporation of India (NPCI).
3	Cards Payment Networks	(i) American Express Banking Corp., USA. (ii) Diners Club International Ltd. USA (iii) Master Card Asia/ Pacific Pte Ltd., Singapore. (iv) National Payments Corporation of India. (v) Visa Worldwide Pte Limited, Singapore.
4.	Cross Border Money Transfer – in-bound only.	Bahrain Financing Company, BSC (C) and others
5.	ATM Networks.	Bank of India and others.

6.	Prepaid Payment Instruments.	Amazon Pay (India) Private Limited, and others.
7.	White Label ATM Operators.	India 1 Payments Limited and others.
8.	Instant Money Transfer	Boson Systems Private Limited.
9.	Trade Receivables Discounting System (TReDS).	A. TReDS Limited and others.
10.	Bharat Bill Payment System (BBPS), Bharat Bill Payment Central Unit (BBPCU).	NPCI Bharat BillPay Limited.
11.	Bharat Bill Payment Operating Units (BBPOUs).	Infibeam Avenues Limited and others.

We have gone through the list with RBI circular and we do not find respondent's name in this list annexed with RBI Circular. Hence, we conclude that the Corporate Debtor is not part of Payment and Settlement System as authorized by RBI.

In our view the, Corporate Debtor is working as a facilitating agent to different payment service providers like Banks and other financial institutions, but that support service cannot be categorized as payment and settlement services, as payment services are governed by RBI. Therefore,

in absence of any authorization/ licence from the Regulator/ RBI, the Corporate Debtor cannot be categorized as Financial Service Provider in view of the legal position as per section 3(17) of the IBC, 2016, just for managing ECS (Debit) User Service on behalf of some banks or other financial institutions .

(VI) After in depth analysis of all the three points raised by respondent , as discussed above, We conclude that even if we consider that definition of financial services as defined U/S 3(16) is inclusive , the activities of the respondent can not be covered under financial service.

(VII) As discussed above, according to the definition of FSP, any person to qualify as FSP must have two ingredients (1) Must be providing financial services and (2) Must have a authorization or registration from a financial sector regulator. Respondent has argued that it is having valid authorization from SEBI to act as KRA and from RBI to act as ECS debit user for Bank of India, therefore it must be treated as FSP . We have gone through all the documents and submissions made in this respect and our findings and observations on this issue are as under:

Authorization from SEBI to act as KRA

The respondent has submitted a registration certificate issued by SEBI to Corporate Debtor to act as KRA . A copy of licence as produced before us has its validity from 22.11.2012 to 21.11.2017 and the same date of validity is shown in the website of SEBI as well. The petitioner has countered that licence is not valid as on date as the website of SEBI shows validity of licence only upto 22.11.2017. We have perused the copy of license submitted to us and observe that in para (6) of license its validity is shown for a period of 5 years from the date of issue i.e 22.11.2012. To counter the above contention respondent has placed its reliance on para 7(2) of the Gazette Notification , which is reproduced hereunder:

“Grant of certificate of registration

7. (2) The certificate of registration granted under sub-regulation (1) shall be valid unless it is suspended or cancelled by the Board.”

The respondent further contends that the website of SEBI showing expiry of its licence might not have been updated, but because its licence is not revoked by SEBI, it is still having valid licence.

We have perused the above referred Gazette Notification filed by petitioner , thoroughly and would refer Para 6 of the said Notification,

which deals with consideration of application for grant of certificate of registration to KYC Registration Agencies is reproduced hereunder:

“Consideration of application for grant of certificate of initial registration

6. (1) The Board shall not consider an application, unless the applicant is a fit and proper person to the satisfaction of the Board and belongs to one of the following categories, namely:

(a) a wholly owned subsidiary of a recognized stock exchange, having nation-wide network of trading terminals, or;

(b) a wholly owned subsidiary of a depository or any other intermediary registered with the Board or;

(c) a wholly owned subsidiary of a Self-Regulatory Organization (SRO) registered under SEBI (Self-Regulatory Organization) Regulations, 2004,

Provided that any conflict of interest does not exist between the role of the applicant as KRA and other commercial activities of the applicant, its associates and group companies.

Provided further that the applicant shall have to satisfy to the Board about the organizational capabilities, technology and systems and safeguards for maintaining data privacy and preventing unauthorized sharing of data.

Notwithstanding the aforementioned, the Board shall have the power to examine any possible case of conflict of interest in applications.

(2) The applicant as mentioned in sub regulation (a) to (c) of regulation 6(1) above shall have a net worth of at least Rs 25 crore on a continuous basis.”

The copy of the license produced by respondent also has reference to this clause (6) , relevant part is reproduced below:

“3.Your attention is invited to Regulation 6(1) & (2) of the KRA Regulations, 2011, which provides the considerations for grant of certificate of initial registration.”

If we analyse relevant part of Gazette Notification with the certificate issued , it is clear that respondent /Corporate Debtor being a wholly owned subsidiary of Karvy Stock Broking Limited, who owns 4994 shares which forms 99.88% as per the Memorandum of Association (page 214 of the Company Petition), and Karvy Stock Broking Limited (Holding Company) being intermediary registered with SEBI , the respondent falls under clause 6(1)(b) of the above Gazette Notification and thereupon was granted licence to act as KYC Registration Agency and this condition was also referred to in the license as well .

Since there was a news that SEBI after an investigation has passed an order canceling the Certificate of Registration of Karvy Stock Broking Limited on 31.05.2023, we have directed both the parties on 06.06.2023, to file Written Submissions on the effect of this incident on the licence/ authorization of Karvy Data Management Services Limited/ respondent herein. The respondent has filed Memo dated 26.06.2023 submitting that cancellation of licence of Karvy Stock Broking Limited has no impact on the licence of Karvy Data Management Services Limited, but factually licence of Karvy Data Management Services Limited was given on the

basis of it being a wholly owned subsidiary of Karvy Stock Broking Limited. In this backdrop , the above said statement from respondent can not be accepted beyond doubts. Further, the respondent has also not produced any other proof like letter from SEBI about the current validity of authorization by SEBI except relying on para 7(2) of the Gazette Notification which may not hold good when the promoter company is under investigation by SEBI.

(VIII) Therefore , we decide that firstly KRA activity can not be treated as financial sector activity and secondly respondent also did not produce any clear evidence that its KRA license is valid as on date.

Authorization by RBI to act as ECS debit user for Bank of India:

(IX) The Corporate Debtor has produced RBI letter dated 28.05.2013 (Annexure A-2, page 22 of the Additional Affidavit dated 06.06.2022 filed by the respondent) addressed to Bank of India, Hyderabad-Secunderabad Service Branch allotting ECS User Code 5009300 on the request letter dated 24.05.2013 of Bank of India.

The respondent has pleaded that this letter be treated as a certificate/ authorisation from the regulator/ RBI, but this letter is not an authorisation issued to Karvy Data Management Services Limited/ Corporate Debtor.

Reserve Bank of India/ Financial Regulator on the request of Bank of India have allotted an ECS User Code to Bank of India for one of their service provider, viz. Karvy Data Management Services Limited. Therefore, this letter of RBI cannot be treated as an authorization to Karvy Data Management Services Limited for participating in ECS services.

The respondent has also referred to some services provided by it to LIC, Mutual Fund Asset Management Limited, Mirea Asset Global Investment (India) Private Limited, etc. for providing them some transaction processing facilities through NACH. As already explained, all these services fall under the category of ‘support services’ or ‘back end services’ to the main client and if these services are offered to financial service providers, the service provider/ respondent cannot claim itself to be a FSP. If we go by this logic, then the scope of FSPs will become so wider that it will include all the companies and individuals providing support services through their various IT based platforms to various banks, NBFCs, Insurance Companies and other financial institutions and while enacting the statute of Insolvency & Bankruptcy Code, 2016, it was not the intent of the Legislature to keep such large number of companies/ corporates out of the purview of Chapter II- Corporate Insolvency Resolution Process of IBC, 2016.

(X) Therefore , we decide that respondent has failed to put before us any valid authorization issued or registration granted by a financial sector regulator for both the activities i.e KRA activity and payment service provider. Firstly, we do not find that these activities provided by respondent are financial sector activities and secondly respondent also failed to produce any valid authorization issued or registration granted by financial sector regulator. Respondent has failed to produce any authorization issued or registration granted from RBI for its purported payment services and also did not produce any concrete and clear evidence that its KRA authorization issued by SEBI is valid as on date.

(XI). Before concluding our decision on Issue no 4, we summarize below the sub- issues we dealt with in the said issue and our conclusions thereof on these sub-issues:

Legal position as defined through various sections and sub-sections of the IBC, 2016 :

We have discussed on all these aspects in para (II) and para (III) and concluded in para (IV) that the services provided by respondent/ corporate debtor do not fit in the definition of financial service provider in terms of the definition of financial service provider as per IBC, 2016.

Considering that definition of Section 3(17) is inclusive and deciding whether activities provided by respondent can be treated as financial service beyond 9 sub-sections of section 3(17):

We have discussed on all these aspects in para (V) and concluded in para (VI) that after in depth analysis of all the points raised by respondent and even considering that definition of financial services as defined U/S 3(16) is inclusive , the activities of the respondent can not be covered under financial service.

Authorization issued or registration granted by a financial sector regulator:

We have discussed on all these aspects in paras (VII) to (IX) and concluded in para (X) holding that respondent failed to produce any authorization issued or registration granted by RBI for payment services and also did not produce any clear evidence that KRA authorization issued by SEBI is valid as on date.

(XII) Therefore, our answer to issue no 4 is in negative and respondent cannot be considered as a Financial Service Provider and cannot be excluded from the definition of Corporate Person as defined in Section 3(7) of IBC, 2016. We further hold that respondent being a corporate

person as per section 3(7) of IBC, 2016 assumes the definition of “Corporate debtor” as per Section 3(8) of IBC, 2016.

(XIII) On the basis of our findings and answer to the issues as discussed above, we conclude that this application can be admitted under section(7) of IBC, 2016. Accordingly, this Petition is admitted.

16. Hence, the Adjudicating Authority admits this Petition under Section 7 of I&B Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

(A) Corporate Debtor, M/s Karvy Data Management Services Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016,

(B) The Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of

Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(D) 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) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(F) That the order of **moratorium** shall have effect **from the date 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, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints Shri Kranthi Kumar Kedari having Registration No. IBBI/IPA-001/IP-P00173/2017-18/10342 as Interim Resolution Professional, whose contact details are:

e-mail ID: kranthikumar1980@gmail.com

Address: Flat no. 101, Sri Krishnas Rail nilayam, G-134, Madhura Nagar, Hyderabad, Telangana - 500038.

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(I) The proposed IRP shall file Form 2 issued by the IBBI along-with his authorization for Assignment within 3 days from the receipt of this order. Thus, there is compliance of Regulation 7A of IBBI (Insolvency

Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(J) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.

(K) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.

17. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under Corporate Insolvency Resolution Process.

Sd/- **CHARAN SINGH** **DR. N. VENKATA RAMAKRISHNA BADARINATH**
MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

Karim/Pavani