<u>Admission of CIRP Applications on the basis of Form D (Record of Default) issued by NeSL-Information Utility</u>

NCLT, Bengaluru Bench, in the CIRP Application filed by M/s Krone Finstock Private Limited under Section 7 of IBC, 2016 (C.P.(IB) No. 145/BB/2022), has admitted the application for initiation of Corporate Insolvency Resolution against the Corporate Debtor M/s Deccan Charters Private Limited, vide Order dated 05-04-2024.

In the above-mentioned Order, the Hon'ble members of NCLT have placed reliance on the contents of the Records of Default issued by NeSL-IU in determining the **<u>amount of default</u> and <u>date of default</u>**, for admitting the application filed under Section 7 of IBC, 2016, read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP.

<u>The relevant extracts of the Orders of NCLT are as under:</u>

<u>Page 11, Para 16:</u>

"In so far as the matter regarding admission of cases under Section 7 of the IBC is concerned, the Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd. vs. ICICI Bank and Ors. Reported in (2018) 1 SCC 407*** *has held as under:*

> *30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred………"*

<u>Page 12, Para 17:</u>

" *Further, the Hon'ble Apex Court in the above mentioned judgment has also pointed out to the records of the information utility reflecting the existence of a debt and a default to be a determining factor. In this case also the information utility has furnished a Record of Default in Form-D which was authenticated on 08.11.2023 and filed before this Adjudicating Authority vide diary no.5899 dated 22.11.2023. This Record of Default in Form-D issued by NeSL clearly shows the default amount as Rs.5 Crore, and the date of default as 25.08.2019, albeit with a remark "disputed" against the authentication. However, existence of a dispute is not relevant for the purposes of Section 7 of the IBC. It is pertinent to mention here that the Respondent in its objection filed on 13.12.2022 has not denied and has confirmed the availing of the loan for an amount of Rs.5 Crore ……."*

<u>Page 12, Para 18:</u>

" *In view of the above discussion, we are of the considered opinion that there is a debt and default in this case; and the Petition is filed within the limitation period. The threshold requirement is also fulfilled. Hence the present petition* ***CP (IB) No. 145 of 2022 is admitted*** *under section 7 of IBC…*"