

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 556 of 2025

[Arising out of order dated 04.03.2025 passed by the adjudicating authority
(National Company Law Tribunal, Mumbai Bench – I), in I.A. 595/2025 in
C.P.(IB)/383(MB)2023]

IN THE MATTER OF:

Canara Bank

...Appellant

Versus

**Bhavesh Mansukhbai Rathod,
Interim Resolution Professional & Ors.**

...Respondents

Present:

**For Appellant : Mr. Arun Kathpalia, Sr. Advocate with Mr. Aayush
Agarwala, Ms. Kritika Bhardwaj, Ms. Disha Gupta
and Mr. Aditya Dhupar, Advocates.**

**For Respondent : Mr. Gopal Jain, Sr. Advocate with Mr. Mahesh
Agarwal, Mr. Rishi Agarwala, Mr. Ankur Saigal,
Mr. Shivam Shukla, Mr. Kaustubh Singh and Mr.
Pranav Saigal, Advocates.**

WITH

Company Appeal (AT) (Insolvency) No. 588 of 2025

[Arising out of order dated 04.03.2025 passed by the adjudicating authority
(National Company Law Tribunal, Mumbai Bench – I), in I.A. 595/2025 in
C.P.(IB)/383(MB)2023]

IN THE MATTER OF:

Authum Investment & Infrastructure Ltd.

...Appellant

Versus

Canara Bank & Ors.

...Respondents

Present:

**For Appellant : Mr. Gopal Jain, Sr. Advocate with Mr. Mahesh
Agarwal, Mr. Rishi Agarwala, Mr. Ankur Saigal,
Mr. Shivam Shukla, Mr. Kaustubh Singh and Mr.
Pranav Saigal, Advocates.**

For Respondent : Mr. Arun Kathpalia, Sr. Advocate with Mr. Aayush Agarwala, Ms. Kritika Bhardwaj, Ms. Disha Gupta and Mr. Aditya Dhupar, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals have been filed against the same order dated 04.03.2025 passed by the adjudicating authority (National Company Law Tribunal (NCLT), Mumbai Bench –I) in I.A. No. 595/2025. By the impugned order dated 04.03.2025, I.A. No.595/2025 has been partly allowed. Aggrieved by the order dated 04.03.2025, by which order, adjudicating authority has not accepted the prayer of the Canara Bank to exercise jurisdiction under Section 65 of the Insolvency & Bankruptcy Code, 2016 (for short the ‘Code’ or the ‘IBC’), the Comp. App. (AT) (Ins.) No. 556/2025 has been filed. Comp. App. (AT) (Ins.) No. 588/2025 has been filed by Authum Investment Limited against the directions issued in paragraph 8.12 directing the Resolution Professional (RP) to conduct a Forensic Audit in relation to such transaction through the applicants empanelled auditor at the cost of the applicant (Canara Bank), Comp. App. (AT) (Ins.) No. 588/2025 has been filed against the above part of the order.

2. Both the appeals have been heard together and are being decided by this common judgment.

3. Brief facts of the case necessary to be noticed for deciding the appeals are:

- i. The corporate debtor – Carnival Techno Park Pvt. Ltd. vide its letter dated 20.01.2017 requested Reliance Capital Ltd. for financial assistance.
- ii. Financial creditor, Reliance Capital Ltd. vide its sanction letter dated 16.01.2017 sanctioned disbursement of Rs.75 crore to the corporate debtor. The Facility Agreement dated 20.01.2017 was entered into between the Reliance Capital Ltd. and the corporate debtor along with the co-borrowers.
- iii. Loan Facility was granted at the interest rate of 15% p.a. and in case of default in payment, the defaulted amount carried further interest at the rate 36% p.a. compounded monthly.
- iv. The financial assistance extended by Reliance Capital Ltd. was duly secured by way of charge over the intercorporate deposit receivables of Rs.175 crore from Advantage Overseas Pvt. Ltd. under deed of hypothecation executed in favour of the Reliance Capital Ltd.
- v. Under the order of the Bombay High Court dated 06.12.2016 by Scheme of Arrangement, dues which were payable by corporate debtor to Reliance Capital Ltd. stood transferred and vested in Reliance Commercial Finance Ltd. (RCFL).
- vi. An addendum dated 16.10.2017 was issued to the sanction letter dated 16.01.2017 between the corporate debtor as borrower, Asian Business Connection Pvt. Ltd. (ABC Pvt. Ltd.) and Reliance Capital Ltd. giving the borrower the right to assign the subsisting loan with accrued interest

to any of the group entities or its subsidiaries. The corporate debtor claimed to have assigned the debt in the year 2020 to ABC Pvt. Ltd.

- vii. The RCFL filed an application under Section 7 against the corporate debtor on 24.01.2023 being C.P. (IB) No.383/ND/2023 to initiate Corporate Insolvency Resolution Process (CIRP) against the corporate debtor alleging an amount due of Rs.201,38,92,545/- as on 01.01.2023.
- viii. Adjudicating authority issued notice in Section 7 application on 17.05.2023. The corporate debtor appeared and filed its reply objecting to the Section 7 application. The corporate debtor pleaded that there is no creditor/debtor relationship between the petitioner and the respondent. It was further pleaded that the debt was assigned to ABC Pvt. Ltd. under the addendum dated 16.10.2017 and there is no debt due on the corporate debtor. Adjudicating authority after hearing the parties by an order dated 13.02.2024 admitted Section 7 application appointed the Interim Resolution Professional (IRP) and declared the moratorium.
- ix. In the CIRP process of the corporate debtor, the Canara Bank filed its claim in 'Form-C' on 06.03.2024 claiming the outstanding amount on the corporate debtor of Rs. 116,99,83,474/-. Details of security were also mentioned in 'Form-C'. Interim Resolution Professional (IRP) constituted the CoC assigning vote share of 71.76% to the financial creditor RCFL and 28.24% vote shares to the Canara Bank.

- x. The suspended director of the corporate debtor filed an appeal before this Tribunal challenging the admission order being Comp. App. (AT) (Ins.) No. 495/2024. On 27.03.2024, Canara Bank filed I.A. No.1698/2024 before the adjudicating authority seeking direction against the RP to provide particulars of claim of Authum Investment & Infrastructure Ltd. (who subsequently took over the RCFL).
- xi. The Canara Bank also filed an intervention application in Comp. App. (AT) (Ins.) No. 495/2024 before this Tribunal. On 05.06.2024, adjudicating authority dismissed I.A. 1698/2024 by which Canara Bank had sought documents from RP in respect of lending between the Reliance Capital Ltd. and corporate debtor. Canara Bank aggrieved by the order dated 05.06.2024 filed Comp. App. (AT) (Ins.) No. 1818/2024 which appeal was withdrawn by the Canara Bank on 06.09.2024.
- xii. Comp. App. (AT) (Ins.) No. 495/2024 was also subsequently withdrawn by suspended director on 07.08.2024. On 10.05.2024, this Tribunal was pleased to approve the demerger of the financial creditors (RCFL) lending business to Authum Investment & Infrastructure Ltd. Consequently, Authum Investment & Infrastructure Ltd. became member of the Committee of Creditors (CoC) in place of RCFL.
- xiii. It was on 10.01.2025, Canara Bank filed the I.A. No.595/2025 seeking dismissal of the company petition, imposition of penalty under Sections 65 & 75 of the Code. The reply was filed to the I.A. 595/2025 by the RP as well as the Authum Investment & Infrastructure Ltd.

xiv. On 04.03.2025, adjudicating authority decided I.A. No.495/2025 partly allowing the application insofar as it directed the RP to conduct the Forensic Audit through the Canara Bank empanelled auditor at the cost of Canara Bank.

xv. Both the above appeals have been filed challenging the order dated 04.03.2025 as noted above.

4. We have heard learned Sr. counsel Mr. Arun Kathpalia appearing for the Canara Bank as well as learned Sr. counsel Mr. Gopal Jain appearing for the Authum Investment and Infrastructure Ltd. and Mr. Yahya Batatawala appearing for the RP.

5. Learned counsel appearing for the Canara Bank in support of the appeal contends that the adjudicating authority committed error in refusing to grant relief to the appellant as prayed in the application filed under Section 65 of the IBC. It is submitted that as on the date of initiation of the CIRP, no debt was due to the RCFL pursuant to addendum dated 16.10.2017. Corporate debtor has assigned its debt on 30.09.2020 to ABC Pvt. Ltd., hence initiation of CIRP was mala fide, fraudulent and malicious. It is submitted that in the financial statement of the corporate debtor from 2021 onwards, debt was shown to ABC Pvt. Ltd. Financial creditor had not raised any objection to the assignment, wherein the financial statement, debt was shown in the balance sheet of ABC Pvt. Ltd. There was no occasion to initiate the CIRP by financial creditor. Adjudicating authority having found sufficient cause for a Forensic Audit, adjudicating authority ought to have exercised its jurisdiction under Section 65 to recall the admission order as when the very

same transaction that founded the very basis of admission order is the one which has been directed to be investigated. Admission of claim RCFL to the tune of Rs.293.4 crore is against the sanction loan of Rs.75 crore. On the strength of 71.76 voting rights, Authum Investment & Infrastructure Ltd. has approved its own resolution plan and is now Successful Resolution Applicant (SRA). Taking all facts together it is clear that CIRP had been initiated fraudulently and in collusion. Canara Bank is the secured creditor of the corporate debtor. Aggrieved by the quantum of RCFL's claim admission, the Canara Bank has asked the IRP to disclose the particulars of RCFL's loan, on refusal of the IRP to disclose the I.A. was filed, which was rejected against which the Canara Bank filed its appeal. The appeal was also filed by suspended director of the corporate debtor against admission order which was withdrawn without any reason. NCLT having directed for conducting the Transaction Audit Report it is clear that serious doubt was raised with regard to transaction in question, in which circumstances adjudicating authority ought to have exercised its jurisdiction under Section 65 of the Code. Adjudicating authority committed error in treating the application filed by appellant under Section 65 of the Code as an application only to recall the admission order, whereas, application filed by Canara bank was to invoke the jurisdiction of adjudicating authority under Section 65 of the Code and to set aside the entire CIRP process which has been fraudulently and maliciously initiated. The application filed by the appellant was not an application to recall the admission order.

6. Learned counsel for the financial creditor refuting the submissions of the counsel for the appellant submits that the pleas which are sought to be raised by Canara Bank in its I.A. No.595/2025 were already raised by the corporate debtor before the adjudicating authority objecting Section 7 application filed by RCFL. The corporate debtor had already pleaded in its reply to Section 7 application that there is no debtor and creditor relationship between the financial creditor and the corporate debtor and the debt has already been assigned to ABC Pvt. Ltd. Adjudicating authority after considering the above plea of the corporate debtor has admitted Section 7 application finding the debt and default, the Canara Bank by the application is now praying to review the said order of the adjudicating authority admitting Section 7 application and to hold that no debt exists. Adjudicating authority having returned the finding of existence of debt and default which finding cannot be allowed to be questioned by Canara Bank indirectly by filing an application under Section 65 of the Code. It is submitted that Canara Bank is the Member of the CoC with voting right of 28.24% and it has participated in all the CoC Meetings. Canara Bank was aggrieved by admission of claim of RCFL as secured creditor, which was being objected by the Canara Bank. The ingredients of Section 65 of the Code were not present in the facts of the present case. The financial creditor has initiated proceedings, since corporate debtor committed default. Financial creditor was not party to the addendum or assignment of the debt to ABC Pvt. Ltd. It is submitted that there was no collusion between the financial creditor with the corporate debtor, corporate debtor has raised all pleas objecting to Section 7 application including that there is no debt which however was not accepted, the said issue cannot be

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reagitated by Canara Bank by means of Section 65 application. Canara Bank has also filed an appeal challenging the order passed by the adjudicating authority on the application filed by Canara Bank, which appeal was withdrawn by the Canara Bank itself. All grounds which were raised in the appeal filed by the Canara Bank are the grounds which are repeated in Section 65 application. Canara Bank having filed 'Form-C' as a financial creditor which claim was admitted Canara Bank has submitted itself to the jurisdiction of the CIRP process and having participated in all CoC Meetings, it is not open for the Canara Bank now to contend that there was no debt. There was disbursement within meaning of Section 5(8) of the IBC by the financial creditor to the corporate debtor. Authum Investment & Infrastructure Limited's predecessor i.e., RCFL has never approved the alleged assignment, the Scheme of Demerger had already taken effect post vesting RCFL entitlement to recover the debt from corporate debtor which stood assigned to RCFL. Application filed under Section 65 by the Canara Bank was nothing but an application to recall the order of admission. Allegation of collusion has no basis. The admission order by NCLT itself notices the application was fully contested by the corporate debtor. Mere fact that appeal against the admission order was withdrawn by suspended director cannot be basis to infer any collusion. Application under Section 65 need to be based on cogent pleadings and particulars of fraud which is wholly absent in the application under Section 65 of the Code. There is no prohibition of submitting resolution plan by Members of the CoC. All pleas which are sought to be raised by Canara Bank in its application under Section 65 were already taken by the corporate debtor in reply to Section 7 application, which were

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considered and rejected. The said issues cannot be allowed to be reagitated by means of Section 65 application. Admission order was passed on 13.02.2024 and Canara Bank application under Section 65 was filed on 10.01.2025. Canara Bank has filed a financial claim in the CIRP and has participated in the Meeting of the CoC as Member of the CoC. Adjudicating authority has rightly rejected the application.

7. Learned counsel for the financial creditor in support of Comp. App. (AT) (Ins.) No. 588/2025 contended that there being no merit in application under Section 65 and the adjudicating authority having refused prayers in Section 65 application there was no occasion for issuing any direction to conduct a Forensic Audit. The direction of the adjudicating authority in paragraph 12.8 deserves to be set aside.

8. We have considered the submissions of the counsel for the parties and perused the records.

9. The order impugned has been passed by the adjudicating authority on an application filed by Canara Bank under Sections 65 & 75 of the IBC. The prayers made in the application I.A. No.595/2025 has been quoted in paragraph 1 of the impugned order, which is as follows:

“i. This Tribunal be pleased to allow the present Application;

ii. This Tribunal be pleased to take on record and consider the facts and documents mentioned by the Applicant in the present Application;

iii. That this Hon'ble Tribunal be pleased to pass orders dismissing the Company Petition No.383 of 2023;

iv. That this Tribunal be pleased to pass an order imposing heavy penalty under Section 65 of the

Insolvency and Bankruptcy Code upon the Respondents i.e. the Financial Creditor, Corporate Debtor and Resolution Professional;

v. That this Tribunal be pleased to pass an order imposing heavy penalty under Section 75 of the Insolvency and Bankruptcy Code upon the Respondents i.e. the Financial Creditor, Corporate Debtor and Resolution Professional;

vi. That this Tribunal be pleased to pass orders directing The Insolvency and Bankruptcy Board of India ("IBBI") to conduct inquiry regarding ex-facie collusion between the Resolution Professional, RCFL, Corporate Debtor and the Respondent No.4 Prospective Resolution Applicant ("PRA");

vii. This Tribunal be pleased to pass orders directing a detailed inquiry through appropriate Investigation Agency of Government of India, Serious Fraud Investigation Office ("SIFO") into the affairs of the Financial Creditor, Corporate Debtor, Resolution Professional and Prospective Resolution Applicant,

viii. pending the hearing and final disposal of the present Application the Respondent No. I be restrained from opening and placing the Resolution Plan (if any) before the CoC;

ix pending the hearing and final disposal of the present Application the Respondent No. I be restrained from taking further steps in respect of CIRP of the Corporate Debtor;

x. Pending the hearing and final disposal of the present Application the CIRP of the Corporate Debtor be kept in abeyance."

10. Submission which has been advanced by the learned counsel for the Canara Bank, the basis of argument and basis of application under Section 65 is that there was no debt in existence on the date when application under Section 7 was filed by financial creditor – RCFL. The basis of such argument is that as per addendum dated 16.10.2017, the corporate debtor has assigned the debt the ABC Pvt. Ltd. and in the financial statement of the corporate debtor although debt was reflected to the financial creditor in the year 2017-

18, 2018-19 & 2019-20, but thereafter in the financial statement the debt shown in the name of ABC Pvt. Ltd., which clearly means that debt was assigned to ABC Pvt. Ltd. and no debt existed payable to the financial creditor and very basis for initiation of CIRP was malicious and fraudulent.

11. It is relevant to notice that in Section 7 application which was filed by the financial creditor – RCFL, the corporate debtor has filed the reply and contested the application. The corporate debtor in its reply has also pleaded that there is no creditor/debtor relationship between the petitioner and the respondent and further no financial debt is owed by the corporate debtor to the said petitioner. The assignment of debt to ABC Pvt. Ltd. was clearly pleaded. The adjudicating authority in its admission order dated 13.02.2024 has noticed the submissions of the corporate debtor in opposition to Section 7 application. Under heading “C” in paragraph 26 & paragraph 27, following has been noticed:

“C. That there is no financial debt owed by the Respondent to the Petitioner.

i. The Respondent has contended that under the Facility Agreement the Applicant had never disbursed the amount of 73,32,00,000/-.

ii. The Applicant has sought to rely upon a statement described as "Statement of Accounts maintained by the Financial Creditor in accordance with the Bankers Books Evidence Act, 1891". However, upon bare perusal of this document it can be concluded that it cannot possibly be a statement of accounts under the Bankers Books Evidence Act, 1891. This is for the simple reason that the Applicant is not a bank, i.e., it is not a company incorporated under the relevant provisions of law for the purpose of conducting the business of banking. Rather, it is an admitted position that the Petitioner is a NBFC,

i.e., a Nonbanking Finance Company. Hence, it would have produced bank statements.

iii. Moreover, the amount of Rs. 23,00,00,000/- was not disbursed by the Applicant in reality, but the amount was shown to have been transferred only through a journal entry.

iv. The Respondent has contested the invoices raised by Reliance Money Solutions Private Limited and Reliance Securities Limited, wherein the amounts of these invoices correspond exactly with the purported and alleged disbursements by Reliance Capital Limited to Advantage Overseas Pvt. Ltd. According to the Respondent, these appear to be accounting adjustments. The same contentions have been made by the respondent as regards the amount of Rs. 50,32,00,000/- claimed by the Applicant. Further, no actual amounts were transferred either to Cinema Ventures Pvt. Ltd. or the Respondent.

27. Vide the Additional Affidavit the Corporate Debtor submitted that the 'debt' forming subject matter of the present Application was assigned by the Corporate Debtor to Asian Business Connections Pvt. Ltd. based on a right of assignment given to the Corporate Debtor under an alleged Addendum dated 16.01.2017. It is stated that no amount is shown as payable by the Corporate Debtor under the Facility Agreement for the financial year ending on 31.03.2021 since this debt was assigned to Asian Business Connections Pvt. Ltd. with effect from 30.09.2020."

12. The plea which is now sought to be raised by Canara Bank in application under Section 65 was thus clearly pleaded and contended by the corporate debtor before the adjudicating authority when Section 7 application came for consideration. Adjudicating authority has considered the submission and held that corporate debtor has shown in its books of account, the financial creditor as financial creditor. It was held that corporate debtor has declared the applicant as financial creditor in its audited financial statement drawn after the effective date. The adjudicating authority has also noticed the demerger scheme which was approved by order dated 09.12.2016
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by Bombay High Court under Sections 391 – 394 of the Companies Act, 2013. The findings have been recorded by adjudicating authority in paragraph 31 holding that corporate debtor has declared the applicant as the financial creditor. Corporate debtor is in default. In paragraphs 31 & 32 of the judgment dated 13.02.2024 is as follows:

“31. The Corporate Debtor has also raised an issue of privity of contract stating that the facility agreement was entered between Reliance Capital Limited and Corporate Debtor after the appointed date of demerger, accordingly the financial creditor is not the creditor of the Corporate Debtor. We find that under the demerger scheme, the commercial finance division was demerged and said loan was granted by Reliance Capital Limited’s Commercial Finance Division after the appointed date but before the effective date. It is in public knowledge that the affairs of a company are carried by the respective Company’s in their own name after the appointed date and the arrangement takes affect only after necessary approvals as required under Companies Act are obtained and the laid down procedure are followed. It is undisputed fact that the whole of the Commercial Finance Division was demerged into a separate company which came into existence as the Applicant after the effective date and the assets and liabilities of the said Commercial Finance Division became the assets and liabilities of the Applicant. Further, the Corporate Debtor has declared the Applicant as its Financial Creditor audited Financial Statement drawn after the effective date and so is the case with the Applicant as well. Accordingly, we find that the loan agreements entered into in the name of Reliance Finance Ltd is to transfer to the Applicant upon the scheme of demerger becoming affected. Hence the objection as to the absence of privity of contract between the parties has no merit.

32. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stand established and there is no reason to deny the admission of the

Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.”

13. When we look into the application which has been filed by Canara Bank under Section 65, it is clear that applicant, Canara Bank is seeking re-adjudication of the issue of debt and default by means of Section 65 application. The plea which are sought to be raised by the Canara Bank in its application under Section 65 is that the debt having been assigned to ABC Pvt. Ltd. on 30.09.2020, there was no debtor/creditor relationship between the financial creditor and the corporate debtor, hence CIRP proceedings need to be terminated by dismissing company petition. What is sought to be contended by Canara Bank in its application is the same pleas which corporate debtor already raised before the adjudicating authority objecting to Section 7 application, which pleas were rejected. Adjudicating authority having found debt and default and admitted Section 7 application, which order also came to be challenged by a suspended director in the appeal before this Tribunal, which appeal was subsequently withdrawn.

14. We are conscious that the mere fact that admission order has been passed under Section 7, which was not challenged by the Canara Bank before the Appellate Tribunal. Canara Bank was not precluded to file a Section 65 application before the adjudicating authority for terminating the CIRP. Law is well settled that admission order Section 7 is not a reason for not considering Section 65 application on its merits. Section 65 application is a power given to the adjudicating authority to terminate a proceeding initiated under Section 7 or Section 9 provided it is satisfied that insolvency resolution proceedings have been fraudulently or with malicious intent has been

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initiated. Present is the case where financial creditor has initiated Section 7 application on the basis of financial facilities sanctioned to the corporate debtor by sanction letter dated 16.01.2017. It is also not disputed that corporate debtor in its financial statements in the year 2017-18, 2018-19 & 2019-20 has continuously shown the debt in the name of financial creditor. The ground taken by Canara Bank of assignment of debt by the corporate debtor on the basis of addendum dated 16.10.2017 in favour of ABC Pvt. Ltd. was raised before the adjudicating authority in Section 65 application which has been considered. The claim of the assignment has been dealt with by the adjudicating authority in paragraphs 8.9, 8.10 & 8.11, which are as follows:

“8.9. At the outset, the documents, placed before a Court or quasijudicial authority in a proceeding before it, are deemed to be taken note and it cannot be said that these documents had escaped attention of this Tribunal while delivering its Order in the said proceedings merely because such document or plea is not dealt with in the Order. It is pertinent to refer the Clause 3, of the Addendum to Sanction Letter dated 16.1.2017 along with the Audited Financial Statement of the Corporate Debtor for the year ended on 31.3.2021. The Clause 3 of the Addendum states that:

"That the Party of the First Part shall have the right to assign the subsisting loan with accrued interest as per the Said Letter to any of its group entity i.e. Asian Business Connections Private Limited or its subsidiaries and/ or its associates/ affiliates at the sole discretion of AB CPL (hereinafter referred to "Assignee" in case if the below event triggers which is more particularly set out herein:

- i. in case, the First Party decides to sell the assets of the Company; or*
- ii. in case, the Second Party decides to sell the shares of the Company."*

8.10. The assignment of debt pursuant to power vested in Corporate Debtor is stated to have taken place on

30.9.2020. Clause 3 vests such power in two scenarios i.e. (i) in case, Corporate Debtor decides to sell its shares, or (ii) ABCPL decides to sell its shareholding in Corporate Debtor. We had noted that the Audited Financial Statements for the year ended 31.3.2021 have been drawn on going concern basis, and the value of Properties has been reported at its carrying value, which is permissible under IND AS only in cases where the management has not resolved to put assets for its sale. Further, the shareholding of RCFL is reported to be held by ABCPL as on 31.3.2020 as well as on 31.3.2021 and these financial statements were signed by the directors appointed by ABCPL, thus not reflecting intent of ABCPL to dispose of its shareholding in Corporate Debtor (Nonetheless, ABCPL continues to remain holding company of Corporate Debtor as per financial statement for the year 2023-24 also). Further, the case pleadings do not reveal that the Corporate Debtor placed on record any submission demonstrating arising of conditions contemplated in Clause 3 of the Addendum. All these facts were before this Bench and duly considered. Accordingly, this Bench did not take note of fact of assignment and passed the Order dated 13.2.2024 on the basis of pleadings before it. The debt, in question, is admitted in the audited financial statements of the Corporate Debtor for the year ended on 31.3.2018 onwards upto 31.3.2020, where after it ceased to be reported on account of purported assignment of debt to ABCPL pursuant to authorisation stated to be given to Corporate Debtor in terms of Addendum dated 16.1.2017. The Applicant can be said to be aware of the said loan, as appearing in the audited financial statement of the Corporate Debtor from 31.3.2018 onwards even prior sanction of its credit facilities to the Corporate, as clause 13 of Other Terms & Conditions appended to its Sanction · Letter for Lease Rental Discounting facility provides for supply of "Audited Financial Statement along with Audit report of the company as well as Due. Diligence Certificate within seven months from the closure of the financial year. Penal interest shall be charged @ 1%p.a.".

8.11. This takes us to suppression of fact that RCFL had not reported the said Credit facility to NeSL, as the same is not reflecting in their records. However, we find that RCFL had placed on record a CIBIL report dated 23.1.2023 which duly records the particulars in relation to debt in question. Accordingly, we are of

considered view that it cannot be said that the Order dated 13.2.2024 was obtained by fraud or misrepresentation. Hence, this Tribunal cannot exercise its power to recall the said Order dated 13.2.2024. It is trite law that this Tribunal does not have power to review its own Order. Accordingly, it cannot proceed to decide the issue again at this stage whether there was disbursal of loan so as to constitute a financial debt after having dealt with this aspect vide Para 30 of the Order.”

15. Adjudicating authority thus has also found that there is no pleading which may reveal that corporate debtor placed on record any submission demonstrating arising out of conditions contemplated in Clause 3 of addendum for exercising the right of assignment.

16. We are of the view that Bank of Baroda cannot be allowed to raise the issue that there was no debt and default on the date when Section 7 application was filed or admitted, the said question having already been decided while admitting Section 7 application after taking into consideration the plea of the corporate debtor which plea also was based on the assignment of debt in favour of ABC Pvt. Ltd. After noticing the said assignment, the adjudicating authority found the debt and default, admitted Section 7 application.

17. Proceeding under Section 65 application has to be based on specific pleadings and materials to show that initiation of CIRP was malicious and fraudulent. Financial creditor, RCFL which took over the receivables of Reliance Capital Ltd. by virtue of order of the Bombay High Court dated 09.12.2016 and financial creditor was shown as financial creditor in the financial statement of the corporate debtor admittedly in 2017-18, 2018-19 & 2019-20, we do not find initiation of CIRP process by the financial creditor

malicious or fraudulent. The addendum which is basis for assignment of debt by corporate debtor to ABC Pvt. Ltd. has also been examined by the adjudicating authority in the impugned order. Admittedly the RCFL was not party to the addendum and assignment of debt took place on 30.09.2020. Adjudicating authority in the impugned order dated 04.03.2025 has also noticed the Minutes of 8th CoC Meeting in paragraph 8.2, where it has been noticed that the corporate debtor has transferred the debt to ABC Pvt. Ltd. without obtaining a No Objection Certificate (NoC) from the lender RCFL. We, thus are satisfied that there was not sufficient material on the record to hold that filing of Section 7 application by financial creditor is malicious or fraudulent initiation of CIRP.

18. Learned counsel for the Canara Bank in support of his submission has placed reliance on the judgment of this Tribunal in **[Comp. App. (AT) (Ins.) No. 42/2022]** in the matter of **‘Hindalco Industries Ltd.’ Vs. ‘Hirakud Industrial Works Limited & Ors.’**, where in paragraph 62 of the judgment, following was laid down:

“62. We, thus, find that while the financial creditor Nandakini has claimed a financial debt, evidently there is no document included in the Form 1 application in proof of any loan agreement and/or disbursement of the said loan. A purported proof of the disbursement of the said loan has been filed by the corporate debtor in the form of its balance sheet, but notably there is no balance sheet or ledger account of the financial creditor for the same financial year showing such a loan. We further find that no document or record regarding entries in the banker books in accordance with the Bankers Book Evidence Act, 1891, which are required to be furnished by the financial creditor along with Form 1 application under section 7 was filed by the Nandakini.”

19. In the present case, Facility Agreement between the financial creditor and corporate debtor is on the record. The balance sheets of the corporate debtor immediately after disbursal of the loan reflect the loan in the books of the corporate debtor, thus the facts which were noticed in paragraph 62 of the judgment of **‘Hindalco Industries Ltd.’ (supra)** are clearly distinguishable. In paragraph 97, following was laid down:

“97. Section 65 of the IBC prescribes a stringent punishment, which may be a penalty extending up to Rs. one crore for fraudulent and malicious initiation of the CIRP. In such a background, we are of the clear view that the initiation of CIRP was done fraudulently by the corporate debtor working in collusion with financial creditor Nandakini and therefore such fraudulent initiation of CIRP started with the admission order under section 7 is liable to be set aside. Therefore, taking recourse to section 65 of the IBC, we set aside the admission order of the section 7 application as its basis, the section 7 application, and loan therein which is claimed to be due and in default are found to be fraudulent.”

20. There cannot be any dispute to the proposition laid down in the case, when initiation of CIRP was done fraudulently with the corporate debtor working in collusion with the financial creditor, admission under Section 7 is liable to be set aside.

21. Another judgment relied by the counsel for the appellant is judgment of this Tribunal in **[Comp. App. (AT) (Ins.) No.1480/2024]** in the matter of **‘M/s. Acute Daily Media Private Limited & Ors.’ Vs. ‘M/s. Rockman Advertising and Marketing India Ltd. & Ors.’**, whereas this Court was considering the appeal filed against the order of the adjudicating authority dated 12.06.2024, where adjudicating authority has allowed the Section 65 application and terminated the CIRP. In the above judgment, this Tribunal

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has noticed the facts and reasons. This Tribunal has affirmed the order of the adjudicating authority terminating the Section 7 application. This Tribunal found that CIRP proceedings were initiated by suppression of relevant material. It was further reiterated that there is no embargo on the adjudicating authority to exercise its discretion in Section 65 application, even if admission order has attained finality. In paragraphs 31 to 33, following was laid down:

“31. We have no quarrel with the proposition of the Appellants that in terms of Section 7 of the IBC, what is required to be seen is the existence of a debt and default of the said debt. Once a debt becomes due or payable and there is incidence of non-payment of the said debt in full or part, CIRP may be triggered by the Financial Creditor as long as the amount in default is above the threshold limit. Be that as it may, Section 65 of the IBC is an enabling provision within the statutory framework of IBC whereby even if a Section 7 application has been filed or has been admitted, it vests jurisdiction on the Adjudicating Authority to examine an application under Section 65, if a prima facie case is made out to show that the Section 7 application had been filed ‘fraudulently’ or ‘with malicious intent’ and for purpose other than resolution of insolvency or liquidation. In the present case too, we therefore do not find any error on the part of the Adjudicating Authority to consider the Section 65 application filed by the Respondent No.1 on being prima facie satisfied that the Section 7 application seeking initiation of CIRP proceedings had been filed by suppression of relevant material for purposes other than insolvency resolution. There is no statutory embargo on the Adjudicating Authority to exercise its discretion carefully and judiciously in a Section 65 application to prevent and protect the Corporate Debtor from being dragged into CIRP. This is a well settled proposition of law and the Adjudicating Authority has drawn reference to the binding precedents laid down by this Tribunal which have already been noticed at paragraph 30 above. We are therefore not much impressed by the argument of the Appellants that the Section 7 order of 17.05.2022 having attained finality,

it cannot be relooked into by the Adjudicating Authority even when a Section 65 application is filed.

32. *While returning our findings on the tenability of the impugned order, we must at the very outset add that that to prove any transaction to be collusive and fraudulent in nature, the degree of proof and evidence required should be beyond reasonable doubt and we propose to apply the same standard of proof to the facts of the present case.*

33. *When we see the material on record, we have no doubt that there was disbursal of money by the Financial Creditors to the Corporate Debtor. From available records, we also agree that the receipt of this amount by the Corporate Debtor has not been controverted by the Corporate Debtor. Neither has any claim been made that this entire sum was paid by the Corporate Debtor. That being the case, there was outstanding payment on the part of the Corporate Debtor qua the Appellants which remained unpaid leading to a default. Basis this premise, we notice that the Adjudicating Authority on 17.05.2022 had initiated CIRP of the Corporate Debtor in terms of Section 7 of IBC. However, when the Section 65 application was filed, the Adjudicating Authority took cognizance of the fact that several facts had not been placed before the Adjudicating Authority during the Section 7 proceedings which culminated in the order of 17.05.2022. The question which needs to be answered is whether the Adjudicating Authority in the impugned order was correct in coming to the conclusion that in the absence of knowledge of these material facts, for reasons of having been either falsified or suppressed, the earlier order of 17.05.2022 failed to note that routine business transactions were fraudulently given the colour and character of loan transactions to bring them within the meaning of Section 5(8) of the IBC. It may also not add be out of place to take note of the fact that when the Section 7 application was being considered by the Adjudicating Authority, the promoters of the Corporate Debtor kept the Adjudicating Authority in the dark about the ongoing OMP.”*

22. This Tribunal recorded its conclusion in paragraph 40, which is as follows:

“40. While there is no quarrel over the fact that Section 7 vests rights on the financial creditors to initiate CIRP proceedings against the defaulting Corporate Debtor, however, debt and default cannot always be seen in isolation. We cannot be unmindful of the fact that the Adjudicating Authority is also required to take care that the provisions of Section 7 of IBC are not misused or abused in any manner either by the financial creditor or the promoters of the Corporate Debtor to take undue advantage at the cost of insolvency resolution. Present is a case where the promoters of the Corporate Debtor and the Financial Creditors in trying to create a non-existent financial debt out of routine business entries, have ended up unwittingly committing lapses which lapses when seen cumulatively points to a web of conspiracy and collusion on their part to create a contrived situation of debt and default. The mistakes and infirmities committed by the Appellants in the process are not one-off or stand-alone mistakes or inadvertent errors. These errors are also grave in that it also included violation of other statutes like Companies Act. When we take a comprehensive and holistic view of the entire conspectus of facts and circumstances, we find that there is ample proof to show that the Section 7 application was a motivated attempt to bring the Corporate Debtor into the rigours CIRP proceedings. The bonafide of the Appellants in the filing of the Section 7 application is clearly doubtful. Viewed from the angle of the totality of circumstances, the findings of the Adjudicating Authority that the insolvency proceedings in C.P.(IB)-50(PB)/2021 resulting in the order dated 17.05.2022 were initiated fraudulently and with malicious intent for a purpose other than the resolution of the insolvency of the Corporate Debtor, is neither dehors the records nor unwarranted. When such fraudulent CIRP proceedings are initiated, the Adjudicating Authority has jurisdiction under the IBC to consider the allegations of fraudulent and malicious initiation of CIRP proceedings in terms of Section 65 and recall the CIRP admission order.”

23. There can be no dispute to the proposition laid down by the Tribunal in the above case in exercise of power under Section 65 even though admission order has become final, the Tribunal can terminate the CIRP proceedings which is initiated fraudulently and with malicious intent.

24. Another judgment relied by the counsel for the appellant is [Comp. App. (AT) (Ins.) No.1733/2024] in the matter of **‘Mr. Vidyadhar Sarfare and Anr.’ Vs. ‘CS Anagha Anasingaraju & Ors.’**, in which judgment, this Tribunal has relied on the earlier judgment of this Tribunal in **‘Hindalco Industries Ltd.’ (supra)** and reiterated the same proposition which we have already noticed above.

25. We have already noticed above that Canara Bank in the present case has filed its financial claim in ‘Form-C’ which was admitted by IRP, appellant is also Member of the CoC with 28.24% vote shares and appellant has participated in CIRP process having participated in the Meetings of the CoC held from time to time, from First CoC Meeting which was held on 12.03.2024 till 10th CoC Meeting held on 07.04.2025. Before filing an application under Section 65, Canara Bank has also filed application before the adjudicating authority seeking a direction to the IRP to provide documents of loan of Authum Investment & Infrastructure Ltd., which application was rejected, which was also sought to be challenged by Canara Bank by filing an Comp. App. (AT) (Ins.) No.1818/2024, which appeal was withdrawn by Canara Bank. The Canara Bank having filed its claim in the CIRP having participated in the CoC Meeting as Member of the CoC and having also filed application for certain documents, after more than 10 months filed an application under Section 65 to agitate the plea that there was no debt in existence when Section 7 application was filed.

26. We, thus are of the view that in the application filed by Canara Bank under Section 65, there is no such pleading or material brought on record, on

which this Tribunal can come to the conclusion that initiation of insolvency resolution process by financial creditor was fraudulent or with malicious intent. Financial creditor has initiated the proceedings on the basis of debt, which was transferred to it by virtue of order of the Bombay High Court dated 16.12.2016. The financial creditor i.e., RCFL was not party to the assignment of debt by corporate debtor to ABC Pvt. Ltd. and the financial creditor in the proceedings has contested the alleged assignment. We, thus are satisfied that no such grounds and materials were brought by the Canara Bank on which adjudicating authority could have exercised jurisdiction under Section 65 for terminating the CIRP process. We, thus uphold the order of the adjudicating authority not exercising jurisdiction under Section 65 in the facts of the present case.

27. Now we come to the appeal filed by the financial creditor being Comp. App. (AT) (Ins.) No.588/2025, which appeal is limited to challenging the directions issued by adjudicating authority in paragraphs 8.12. Prayer 21A of the Comp. App. (AT) (Ins.) No.588/2025 is to the following effect:

“21. RELIEFS SOUGHT

In view of the facts mentioned in Para 7 above, points in dispute and questions of law set out in Para 8, the Appellant prays for the following relief (s);

a) Set aside the Order dated March 25, 2025 passed by the Hon'ble National Company Law Tribunal, Mumbai (Bench I) in Interlocutory Application No. 5247 of 2024 in Company Petition (IB) No. 3528 of 2018 to the extent it rejects the claim of the Appellant for CIRP Costs;”

28. The above order directing the RP to conduct the Forensic Audit was in application under Section 65, when the adjudicating authority decided not to

exercise jurisdiction under Section 65 of the Code, we are of the view that no further order was required in the said application.

29. In the prayers which have been noted by the adjudicating authority in paragraph 1 of the impugned order as extracted above, there was not even a prayer for directing any Forensic Audit to be conducted in the CIRP process. We, thus are of the view that direction as contained in paragraphs 8.12 cannot be sustained.

30. In result of the aforesaid discussions, Comp. App. (AT) (Ins.) No.556/2025 is dismissed and Comp. App. (AT) (Ins.) No.588/2025 is allowed.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

17th April, 2026

himanshu