

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1723 of 2024
& I.A. No. 6248, 6295, 6296 of 2024

(Arising out of the Order dated 03.07.2024 passed by the National Company Law Tribunal, New Delhi Bench (Court-II) in C.P(IB)No.590/ND/2023)

IN THE MATTER OF:

Satish Kumar

(Suspendend Director Of

M/S Lion Buildcon Pvt. Ltd.)

S/o Prem Singh,

R/o H.No. B-132, Street No. 5, Near LIC Office,

Hardev Puri, Shahadara, Mandoli, Saboli,

New Delhi – 110093.

Email: sonam@kdatta.in

...Appellant

Versus

1. M/s Lion Buildcon Pvt. Ltd.

(Through its Resolution Professional,

Mr. Gaurav Kapoor)

Company having registered office at:

B-132, S/F, Kh No. 776/704/508 Gali No. 7,

Hardevpuri,

Shahdara, East Delhi - 110093

Email: lionbuild422@gmail.com

Resolution Professional having its office at:

301, Chaudhary Complex, 9 Veer Savarkar Block,

Madhuban Road, Shakarpur, East Delhi - 110092.

IBBI Registration No .: IBBI/IPA-001/IP-

P01283/2018-2019/12002

Email: gaurav.kapoor@icai.org

...Respondent No.1

2. M/s Kaliber Associates Private Limited

(through its liquidator, Mr.Mohan Lal Jain)

Having its office at:

B-1/12, 2nd Floor, Safdarjung Enclave,

New Delhi-110029

Email: ml_jain@sumedhamanagement.com

...Respondent No.2

Present

For Appellants: Mr. Palash S. Singhai, Mr. Harshal Sareen,
Ms. Riddhi Jain, Mr. Sonam Sharma, Advocates.

For Respondents: Mr. Anirban Bhattacharya, Ms. Priyanka Bhatt,
Mr. Rajeev Chowdhary, Advocates for R-2.

J U D G E M E N T

(02.05.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e. Satish Kumar (Suspended Director of M/s Lion Buildcon Pvt. Ltd.) (the Corporate Debtor) under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('Code'), challenging the Impugned Order dated 03.07.2024 passed by the National Company Law Tribunal, New Delhi Bench (Court-II) (**Adjudicating Authority**), in C.P.(IB) No. 590/ND/2023.

2. M/s Lion Buildcon Pvt. Ltd. (the Corporate Debtor) through its Resolution Professional, Mr. Gaurav Kapoor is the Respondent No. 1 herein.

M/s Kaliber Associates Private Limited through its liquidator, Mr. Mohan Lal Jain is the Respondent No.2 herein.

3. The Appellant has challenged the Impugned Order dated 03.07.2024 on grounds of jurisdictional overreach and legal inconsistency, contending that the Adjudicating Authority erroneously admitted Corporate Insolvency Resolution Process (CIRP) against the corporate debtor solely as a recovery tool for Kaliber

Associates Pvt. Ltd. (KAPL) in liquidation, contrary to the objective of the Code for resolution/revival of the Corporate Debtor. The Appellant argues that the Liquidator of KAPL exceeded their statutory mandate under IBBI Liquidation Process Regulations, 2016 (Regulations 37A, 38, 39, 44), which restrict liquidators to realization and distribution for the company under liquidation and not initiating CIRP against third parties like the Corporate Debtor. The Appellant also pleaded that the Impugned Order disregards the waterfall mechanism under section 53 of the Code by prioritizing KAPL's recovery over Corporate Debtor's creditors and fails to establish LBPL's default under Section 7(5)(a) of the Code, rendering the CIRP admission legally untenable.

4. The Appellant submits that the Adjudicating Authority committed an error by equating the recovery of debt with the resolution/revival of a corporate entity, thereby failing to appreciate the distinct objectives of liquidation and insolvency as encapsulated in the Code. The Appellant emphasizes that liquidation is aimed at the realization and distribution of proceeds among stakeholders in a time-bound manner, whereas insolvency seeks the resolution of a distressed corporate debtor to ensure its revival as a going concern. The Appellant assailed that the Impugned Order which erroneously admitted the CIRP against Respondent No. 1 at the behest of Respondent No. 2 (KAPL) through its liquidator to institute legal proceedings for recovery of dues from KAPL's debtors.

5. The Appellant submitted that the Respondent No. 2 was subjected to CIRP by the Adjudicating Authority through its order dated 18.01.2019 in **Relan**

Buildwell Pvt. Ltd. v. Kaliber Associates Pvt. Ltd. (CP(IB) No. 228/2019), wherein Mr. Vinay Talwar was initially appointed as IRP. Subsequently, during the Second CoC meeting on 15.04.2019, the CoC replaced Mr. Talwar with Ms. Ritu Rastogi as Resolution Professional, and later, in the 8th CoC meeting, appointed Mr. Mohan Lal Jain as RP, whose appointment was formally ratified by the Adjudicating Authority vide order dated 09.07.2019. This sequence underscores the procedural trajectory of KAPL's CIRP, which culminated in the liquidation process and the subsequent initiation of proceedings against Respondent No. 1 (LBPL), thereby forming the basis of the Appellant's challenge to the Impugned Order's validity.

6. The Appellant submitted that pursuant to CA No. 1524/2019 in C.P.(IB) No. 228/2018, the Adjudicating Authority ordered the liquidation of the Respondent No. 2 on 02.01.2020 under Sections 33(1)(a) and 33(2) of the Code, as no viable resolution plan or expressions of interest were received, and confirmed Mr. Mohan Lal Jain as Liquidator, thereby finalizing the transition of KAPL into liquidation due to the absence of revival prospects.

7. The Appellant submits that the Respondent No. 2 through its Liquidator, sought and obtained leave from the Adjudicating Authority vide I.A. No. 5846/2021 in C.P. (IB) No. 228/2019 to institute recovery proceedings under Section 35(1) of the Code, which was erroneously granted by the Adjudicating Authority vide order dated 21.02.2022, thereby sanctioning the Liquidator's overreach beyond the statutory mandate of asset realization for

KAPL and improperly enabling collateral actions against unrelated entities like Respondent No. 1 in contravention of the Code's liquidation framework.

8. The Appellant submitted that the Respondent No.2, through its Liquidator, filed a Section 7 Application on 19.09.2023 to initiate CIRP against the Respondent No.1 alleging a default of ₹2.5 crores. However, the authorization for filing this application was issued by the Liquidator, Mr. Mohan Lal Jain, himself without any approval. The Appellant further contended that the Section 7 Application is frivolous and procedurally defective, as it fails to establish the locus standi of the Liquidator to initiate CIRP proceedings in this manner including the lack of approval and the improper use of CIRP as a recovery mechanism, which undermines the fundamental objectives of the Code and renders the application legally untenable.

9. The appellant submitted that apart from Respondent No. 2, there is not a single creditor of Respondent No. 1, whether financial or operational. This fact is established by the record showing that until 20.07.2024, the Resolution Professional of Respondent No. 1 had received only the claim of Respondent No. 2 under the category of 'unsecured financial creditors belonging to any class of creditors' amounting to Rs. 2.5 crores. Consequently, Respondent No. 2 stands as the sole member of the CoC for Respondent No. 1.

10. The appellant submitted that the Adjudicating Authority failed to appreciate that Respondent No. 2, which is already undergoing a liquidation process, could not have filed a Section 7 application against Respondent No. 1

for initiating CIRP. The Appellant contended that, as per settled jurisprudence, the liquidation process mandates the liquidator to focus on selling the assets of the company to recover dues and distribute the proceeds in accordance with the prescribed waterfall mechanism within a time-bound framework. To ensure timely completion of liquidation, the Liquidation Regulations, 2016 empower liquidators to sell non-readily realizable assets, including book debts, through auctions based on valuation reports provided by valuers. Thus, filing a Section 7 application runs contrary to the objectives and processes of liquidation. The appellant further submitted that initiating CIRP at the instance of a company already under liquidation, merely to recover dues, is fundamentally flawed and contrary to established legal principles, as the Code should not be used as a recovery mechanism. Furthermore, without prejudice, the appellant submits that initiating or admitting CIRP at the behest of Respondent No. 2 would hinder and ultimately defeat the timely completion of the ongoing liquidation process.

11. The appellant submitted that the leave granted by the Adjudicating Authority to the Liquidator of Respondent No. 2, vide its order dated 21.02.2022 in I.A. No. 5846 of 2021 in C.P. (IB) No. 228 of 2019, was solely for the purpose of taking steps in accordance with the law, including initiating proceedings for recovery of dues from defaulting debtors. The appellant contends that this leave was improperly used to file a Section 7 application under the Code as a recovery tool, under the guise of seeking resolution for Respondent No. 1, especially

considering that Respondent No. 2 is admittedly the sole financial creditor of Respondent No. 1.

12. The appellant submitted that Sections 33(5) and 35(1)(k) of the Code permits the Liquidator to institute or defend suits, prosecutions, or other legal proceedings in the name of or against the company under liquidation, including actions for the recovery of its dues. However, this does not extend to initiate CIRP proceedings for the resolution or revival of debtor companies who have defaulted on their debts.

13. The appellant submitted that Respondent No. 2 is undergoing liquidation, and the Liquidator of Respondent No. 2 has arbitrarily alleged that Rs. 2.5 Crores was disbursed as loans and advances to the Corporate Debtor in two tranches in 2013. However, the Liquidator has failed to produce any written contract or document demonstrating that the alleged loan and advance had a commercial effect of borrowing and was disbursed against consideration for the time value of money, which is a prerequisite for qualifying a debt as a Financial Debt under Section 5(8) of the Code. The appellant submitted that the Adjudicating Authority erred in holding that the nature of the debt is financial debt, relying solely on an entry in the Balance Sheet of the Corporate Debtor, in the absence of any written agreement. The appellant contends that the entry in the Balance Sheet merely reflects a debt liability of the Corporate Debtor and does not, in itself, establish a Financial Debt as defined under Section 5(8) of the Code, especially without a written arrangement.

14. The appellant further asserts that in determining whether a debt is a financial debt or an operational debt arising from a written agreement or arrangement, it is essential to ascertain the real nature of the transaction reflected in writing. Therefore, in the absence of any written arrangement, the nature of the transaction, the issue of time value, and the commercial effect of borrowing cannot be properly determined.

15. The appellant submitted that in the case of *Sanjay Kewalramani v. Sunil Paramanand Kewalramani & Ors., Company Appeal. (AT)(Ins.) 57/2018*, this Appellate Tribunal held that there must be evidence suggesting that the Respondents provided a loan to the ‘Corporate Debtor’ which can be termed as a disbursement of an amount for consideration for the time value of money, as required under Section 5(8) of the Code. The appellant asserts that merely granting and admitting a loan does not automatically qualify the respondents as ‘financial creditors’ unless they demonstrate compliance with the substantive definition or any clause of Section 5(8) of the Code.

16. The appellant submitted that the alleged loan was disbursed without any written documentation or repayment schedule. Consequently, the loan became payable on demand. The appellant asserts that a specific demand for repayment of the alleged loan, along with 12% interest, was first made in the legal notice dated 20.07.2020 issued by Respondent No. 2, requiring payment within 7 days. Therefore, the alleged debt became due and payable during the 7 days following 20.07.2020, and the default occurred on 27.07.2020, upon the Corporate Debtor's

failure to repay the amount within the stipulated time. The appellant contended that Respondent No. 2 misled the Adjudicating Authority by claiming the date of default as 31.01.2019, which corresponds to a demand letter issued by the Interim Resolution Professional (IRP). The appellant clarifies that the letter dated 31.01.2019 from the IRP was merely a request for confirmation of the alleged loan amount and did not establish a timeline for repayment and therefore, in absence of a specific repayment timeline, the date of default cannot be construed as 31.01.2019. The appellant asserts that a loan recall notice without a specific payment date is simply a formal communication requesting repayment, not a determination of a default date.

17. The appellant submitted that the demand/legal notice dated 20.07.2020, issued by Respondent No. 2 after his appointment, should be the basis for ascertaining the date of default, as it is the only notice specifying a repayment date. The appellant argues that failure to repay within the stipulated time period in that notice would give rise to the default, making 27.07.2020 the relevant date. As this date falls within the restricted/prohibited period under Section 10A of the Code, the appellant argued that the impugned judgment is liable to be set aside on this ground.

18. The appellant submitted that, under the statutory scheme, while the record of an information utility is relevant, it does not constitute conclusive proof of default. The appellant maintains that a Corporate Debtor is entitled to challenge the statements contained in the information utility record. In support of this

contention, the appellant refers to the Hon'ble Supreme Court's judgment in *Swiss Ribbons Pvt. Ltd. & Anr. v Union of India* [W.P. (C) No. 99 of 2018], paragraph 57, which establishes that an information utility certificate is only prima facie evidence of default and is rebuttable by the Corporate Debtor. This legal proposition was further followed by this Appellate Tribunal in *Dheeraj Wadhawan v Yes Bank & Anr.* [Company Appeal (AT) (Ins) No.953 of 2021], paragraph 31.

19. The appellant submitted that the Liquidation Regulations, 2016, empower Respondent No. 1 (Liquidator) only to take necessary actions to recover monies for maximizing the value of assets or recovering the dues of the Corporate Debtor under Regulations 37A and 38. The appellant argues that, in this case, the Liquidator has exceeded the powers conferred upon him and acted in contravention of the object and scheme of the Code by ignoring the remedies envisaged under the Liquidation Regulations, 2016, and initiating CIRPs against different Corporate Debtors with an oblique motive to prolong the liquidation process of Kaliber Associates Pvt. Ltd. and to avail monetary benefits. The appellant further asserts that the IBBI introduced the assignment of Not Readily Realizable Assets ('**NRRA**') to prevent such misuse of powers by the Liquidator, enabling them to assign such assets to a third party for realization, ensuring that the liquidation is completed in a timely manner.

20. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow their appeal.

21. Per contra, the Respondent No.2, who is the contesting Respondent herein, denied all averments made by the Appellants as misleading and baseless.

22. The Respondent No. 2 submitted that the Application under Section 7 of the Code was filed by the Liquidator of the Financial Creditor/Respondent No. 2 ("Financial Creditor") for maximization of the value of M/s Kaliber Associates Pvt. Ltd. (in Liquidation) pursuant to the approval granted by the Adjudicating Authority on 21.02.2022, seeking initiation of CIRP against the on account of the default committed by the Corporate Debtor in repayment of a 'financial debt' of Rs. 2.5 cr.

23. The Respondent No. 2 submitted that the Financial Creditor disbursed Rs. 2.5 Crores to the Corporate Debtor in two tranches, with Rs. 2,00,00,000 paid on 18.10.2013 and a further Rs. 50,00,000 paid on 09.11.2013, as indicated in the Financial Creditor's Bank Statements. The Respondent No. 2 further submitted that in the Audited Financial Statement of the Corporate Debtor as on 31.03.2020, an amount of Rs. 2.5 Crores is reflected against the name of the Financial Creditor as "Unsecured Loans" under the head "Other Long-Term Liabilities".

24. The Respondent No. 2 submitted that the Audited Financial Statement of the Corporate Debtor as of 31.03.2022 also reflects that the Corporate Debtor has borrowed money from M/s Kaliber Associates Pvt. Ltd., i.e., the Financial Creditor, amounting to Rs. 2.5 Crores which is due and payable. Further, the Audited Financial Statement of the Corporate Debtor as of 31.03.2022 reflects an amount of Rs. 2.5 Crores against the name of the Applicant/Financial Creditor as

"Unsecured Loan from Body Corporate" under the heading "Short term borrowings." Thus, the Corporate Debtor has clearly acknowledged its liability to repay Rs. 2.5 Crores to the Financial Creditor.

25. The Respondent No. 2 submitted that despite several reminders, the Corporate Debtor has neither disputed the demand for repayment made by the Financial Creditor nor repaid the said amount. This clearly demonstrates that despite acknowledging the financial debt of Rs. 2.5 Crores in its Audited Financial Statements as of 31.03.2020 and 31.03.2022, the Corporate Debtor has willfully defaulted in repaying the said financial debt. Furthermore, the audited Balance Sheets dated as of 31.03.2020 and 31.03.2022 of the Corporate Debtor show that the Corporate Debtor is liable to pay an amount of Rs. 2.5 Crores.

26. The Respondent No. 2 submitted that on 20.08.2023, the National E-Governance Services Ltd. (NESL), the Information Utility, issued its Report to M/s Kaliber Associates Pvt. Ltd., authenticating the default filed by M/s Kaliber Associates Pvt. Ltd. with respect to M/s Lion Buildcon Private Limited, with the status of Authentication reflected as "Deemed to be Authenticated". Respondent No. 2 asserts that the record of the NESL/Information Utility, reflecting the status as "Deemed to be Authenticated," is adequate for ascertaining the existence of default and for deciding an application under Section 7 of the Code. Furthermore, this Appellate Tribunal in *Vipul Himmatlal Shah and Another v. Teco Industries*, [(2022) SCC OnLine NCLAT 209] has categorically held that "in case the record of Information Utility shows that there is a debt which is in default, the

Adjudicating Authority or the Appellate Authority are not required to further examine the record maintained by the Information Utility, more so when the record of the Information Utility is deemed authenticated and no dispute or refutation of said record has been done by the corporate debtor earlier."

27. The Respondent No. 2 submitted that the Corporate Debtor acknowledged its liability before the Adjudicating Authority when counsel for the Corporate Debtor informed the Authority that it was exploring a settlement. The Order dated 31.01.2024, passed by the Learned Adjudicating Authority, states that

"Ld. Counsel for the CD submitted that the parties are exploring the settlement qua the defaulted amount. Let an affidavit to the effect be filed by tomorrow. List the petition on 07.02.2024.". Further, the Order dated 07.02.2024 states that "4. Nevertheless, the Ld. Counsel appearing for the CD is endeavoring to enter into settlement qua the defaulted amount with the Applicant/ Petitioner and has already given a proposal to Petitioner to the effect ... ".

28. The Respondent No. 2 submitted that the Appellant's sole contention in the present matter is that the application being C.P. (I.B.) No. 590/ND/2023, filed under Section 7 of the Code, was based on the Order dated 21.02.2022 passed under Section 33(5) read with Section 35(1)(k) of the Code through application I.A. No. 5846/2021, solely for the purpose of recovering dues and not for the resolution/revival of Respondent No. 1. The Respondent No. 2 submitted that, being a company in liquidation pursuant to the order dated 02.01.2020 passed under Section 33 of the Code by the Adjudicating Authority in C.A. No. 1524/C-

II/ND/2019 in C.P. (IB) No. 228/2018, it approached the Adjudicating Authority under Section 33(5) read with Section 35(1)(k) of the Code by way of application I.A. No. 5846/2021, wherein the following prayers were sought:

“i. Grant prior approval to the Applicant to institute suits or other legal proceedings on behalf of the Corporate Debtor including filing application under section 7 of the Code for initiation of CIRP against the Companies/Borrowers of the Corporate Debtor having outstanding dues of above Rs.1,00,000/- (Rupees One Lakh Only) to Rs. 3,00,00,000/- (Three Crore Only) with respect to the recovery of dues for default committed by such companies/borrowers in payment of their debt.

ii. Grant any other relief as this Hon'ble Adjudicating Authority deems fit.”

(Emphasis Supplied)

29. The Respondent No. 2 submitted that vide order dated 21.02.2022, the Adjudicating Authority allowed the prayers in the application, thus permitting Respondent No. 2 to institute any suit or legal proceeding, including filing an application under Section 7 of the Code, against defaulting borrowers, including the Corporate Debtor, before any appropriate forum.

30. The Respondent No. 2 submitted that this Appellate Tribunal, vide its judgment dated 23.09.2024 passed in ***Subhash Chander Chauhan vs. M/s Kaliber Associates Pvt. Ltd***, Company Appeal (AT) (Insolvency) No. 666 of 2024, upheld the filing of an application under Section 7 of the Code by the Liquidator of Respondent No. 2. It was held that:

"14. When we look into the Order, it is clear that prayers made in the Application has beer. allowed by the Adjudicating Authority, the prayers made in the Application has been noticed in the Order itself, were "for granting prior approval to institute suits/legal proceedings on behalf of the Corporate Debtor, including filing of the Section 7 Application of the Code for initiation of the CIRP against the Debtor, having outstanding dues ... ". The approval granted by the Adjudicating Authority, thus was clearly permitted filing of Section 7 Application also. Thus, we accept the submission of the Counsel for the Liquidator that Order dated 21.02.2022 clearly permitted the Liquidator to file an Application under Section 7 against the borrowers. Thus, submission of the Appellant on this ground cannot be accepted."

(Emphasis Supplied)

31. The Respondent No. 2 submitted that by virtue of Explanation II to Section 11 of the Code, it is entitled to against another corporate debtor, which, even as per the decision of the Hon'ble Supreme Court of India in ***Manish Kumar v. Union of India***, [(2021) 5 SCC 1], is aimed at enabling the corporate debtor to recover its dues from its debtors.

32. Concluding his pleadings, the Respondent No.2 requested this Appellate Tribunal to dismiss the appeal with cost.

Findings

33. We have already noted the facts and shall not repeat the same. Following issues have been raised by the Appellant which need to be adjudicated upon.

34. **Issue No. (I)** The Appellant has raised the issue regarding amount claimed by the Respondent is not financial debt. The Appellant conceded that Rs. 2.5 Crores might have been disbursed but not as loans and advances, since there is no contract or written document/ agreement for the same.

Issue No. (II) The Appellant has also raised the issue regarding alleged default falls within restricted period under Section 10A of the Code.

Issue No. (III) Another issue raised by the Appellant is regarding record of default of in the records of the information utility and is not a conclusive proof of the debt and default.

Issue No. (IV) The Appellant has taken the ground that the liquidator of the alleged financial creditor has filed a petition for recovery of the amount and not for resolution of the Corporate Debtor against the regulations of the Code.

35. We shall deal all the aforesaid issues raised by the Appellant in the following discussions.

36. **Issue No. (I)** The Appellant has raised the issue regarding amount claimed by the Respondent is not financial debt. The Appellant conceded that

Rs. 2.5 Crores might has been disbursed but not as loans and advances, since there is no contract or written document/ agreement for the same.

We note that the said amount was paid to the Corporate Debtor in two tranches i.e., Rs. 2 Crores on 18.10.2013 and Rs. 50 Lakhs on 09.11.2013 and the same has been reflected in the bank statements which has been produced before us. We also take into consideration audited annual financial statements of the Corporate Debtor as on 31.03.2020 where an amount of Rs. 2.5 Crores has been reflected in NOTE 2.4 of the balance sheet against the name of the Financial Creditor as “Unsecured Loans” under the head “Other Long Term Liabilities”. Similarly, we also note that in audited financial statements of the Corporate Debtor as on 31.03.2022 against the same amount of Rs. 2.5 Crores has been reflected against the name of the Financial Creditor as “Unsecured Loan from Body Corporate” under the heading “Short Term Borrowing”.

We also take into consideration that the Appellant has not denied regarding this amount disbursed to the Corporate Debtor of Rs. 2.5 Crores but has raised issue regarding the nature of transaction which the Appellant has claimed not as financial debt on the basis is that there is no written contract and agreement showing the same is financial debt.

We do not accept the pleadings of the Appellant since the loans and advances have been clearly reflected in the audited financial statement of the Corporate Debtor which is adequate to establish that the money

disbursed was indeed given as a loan. There is no law or provisions in the Code which requires that there has to be written contract or documentation to establish the loan. The reflection of the same in audited financial statements as well reflection in information utility i.e., National E-Governance Services Ltd., is good enough proof of financial debt.

Hence, on this account, we reject the arguments of the Appellant. We hold that the money disbursed of Rs. 2.5 Crores to the Respondent No.1 by Respondent No.2 indeed was a financial debt.

37. Issue No. (II) The Appellant has also raised the issue regarding alleged default falls within restricted period under Section 10A of the Code.

As regard, the alleged default falling in 10A exempted period of the Code, since one of the legal notice was issued by the Counsel of the Respondent No. 2 to the Corporate Debtor on 20.07.2020 and as such, as per the Appellant the same falls within the exempted period of 25.03.2020 to 25.03.2021 in terms of Section 10A of the Code.

In this regard, we note that in Part IV of Form I, filed along with application under Section 7 of the Code, under which default of Rs. 2.5 Crores was reflected as on 31.01.2019. It is a fact that other demand letter/ legal notice was issued on 20.07.2020, however, the original debt of default as reflected in Part IV is 31.01.2019 which is not covered under the exempted period in terms of Section 10A of the Code.

We take into consideration Part IV filed under Section 7 application before the Adjudicating Authority which reads as under :-

Part - IV		
PARTICULARS OF FINANCIAL DEBT		
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>That as per the records of the Corporate Debtor available with the Liquidator an amount of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) was disbursed by the Financial Creditor as loans and advances to the Corporate Debtor in following two tranches:</p> <p>a. an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) was disbursed by the Financial Creditor to the Corporate Debtor on 18.10.2013.</p> <p>b. an amount of 50,00,000/- (Rupees Fifty Lakhs Only) was disbursed by the Financial Creditor to the Corporate Debtor on 09.11.2013.</p> <p>The disbursement of loans and advances is clearly reflected in the bank statement of the Financial Creditor.</p> <p>A copy of the Bank Statement and copy of the Ledger of C.D as maintained by the Financial Creditor is annexed herewith and marked as ANNEXURE- 5.</p>
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE	<p>Amount Claimed to be in default: Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only)</p>

DEFAULT OCCURRED	Date of Default: 31.01.2019 (Date of Demand letter issued by the IRP)
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Thus, the contention of the Appellant on this account is not legally sanctionable.

38. Issue No. (II) Another issue raised by the Appellant is regarding record of default of non-utility is not a conclusive proof of the debt and default.

One more issue raised by the Appellant is regarding non conclusive evidence of establishment of financial debt based on the transaction recorded by the information utility (NESL). It is the case of the Appellant that under statutory scheme, the record of information utility is relevant but not conclusive proof for any default and the Corporate Debtor is at liberty to disapprove the statement as contained in information utility records. The Appellant has alleged that the Adjudicating Authority failed to appreciate that record of default procured from the information utility by the Respondent No. 2 is only a prima-facie evidence and not a conclusive evidence of debt and default which is required for the purpose of admission of application under Section 7 of the Code.

We have noted that the Rs. 2.5 Crores has been categorically reflected in the audited financial statements of the Corporate Debtor in the balance sheet as on 31.03.2020 as well as on 31.03.2022. This is good enough evidence of establishing the fact of debt payable to the Financial Creditor. The mere fact that

the same was also been reflected in the record of the information utility (NESL) will not dilute the debt granted by the Financial Creditor to the Corporate Debtor and this recorded transaction of loan with the information utility is only as additional evidence of debt and default. In fact, the additional information as evident by the record of the information utility establishes the claims of the Financial Creditor. Thus, the contention of the Appellant in this regard stands rejected.

39. Issue No. (IV) The Appellant has taken the ground that the liquidator of the alleged financial creditor has filed a petition for recovery of the amount and not for resolution of the Corporate Debtor against the regulations of the Code.

The last ground of the appeal taken by the Appellant is that the Respondent No. 2 i.e., liquidator of the Financial Creditor should not have filed section 7 under the Code. The Appellant pleaded that the role of the liquidator is limited in settling the assets available with entity under liquidator and should have taken action for the timely conclusion of liquidation process including selling non readily realizable assets including book debts through auctions based on valuation reports. It is the case of the Appellant that the alleged claims of Rs. 2.5 Crores payable by the Corporate Debtor should have been auctioned by the Respondent No. 2 rather than initiating CIRP proceeding against Corporate Debtor/ Respondent No. 1. In this connection, we note that the Respondent No. 2 / Liquidator had specifically taken approval of the Adjudicating Authority for

instituting legal proceedings on behalf of the Respondent No. 2 including filing an application under Section 7 of the Code.

- (i) The relevant excerpts of the order dated 21.02.2022 are produced hereinbelow -

"IA-5846/2021- By filing this IA, the applicant has prayed for granting prior approval to the Applicant to institute suits/legal proceedings on behalf of CD including filing of Section 7 Application of the Code for recovery of dues/default committed by such companies/borrowers in payment of their debt.

....The Liquidator is directed to take all steps in accordance with the provision of law."

(Emphasis Supplied)

40. We also take into consideration the relevant regulation of IBBI (Liquidation Process) Regulations, 2016, which reads as under :-

"Regulation 37A: Assignment of not readily realisable assets.

37A. (1) A liquidator may assign or transfer a not readily realisable asset through a transparent process, in consultation with the stakeholders' consultation committee in accordance with regulation 31A, for a consideration to any person, who is eligible to submit a resolution plan for insolvency resolution of the corporate debtor.

Explanation.—For the purposes of this sub-regulation, "not readily realisable asset" means any asset included in the liquidation estate which could not be sold through available options and includes contingent or disputed assets and assets

underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in sections 43 to 51 and section 66 of the Code.]

Regulation 38: Distribution of unsold assets.

38. (1) The liquidator may, with the permission of the Adjudicating Authority, distribute amongst the stakeholders, an asset that ¹[could not be sold, assigned or transferred] due to its peculiar nature or other special circumstances.

(2) *The application seeking permission of the Adjudicating Authority under sub-regulation (1) shall-*

- (a) identify the asset;*
- (b) provide a value of the asset;*
- (c) detail the efforts made to sell the asset, if any; and*
- (d) provide reasons for such distribution.*

Regulation 39: Recovery of monies due.

39. The liquidator shall endeavor to recover and realize all assets of and dues to the corporate debtor in a time-bound manner for maximization of value for the stakeholders.

Regulation 44: Completion of liquidation.

44. ¹[(1) The liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions under ²[***] Part II of the Code, before the Adjudicating Authority or any action thereof:

³[***]]

(2) If the liquidator fails to liquidate the corporate debtor within ⁴[one year], he shall make an application to the Adjudicating Authority to continue such liquidation, along with a report explaining why the liquidation has not been completed and specifying the additional time that shall be required for liquidation.

⁵[Explanation- In relation to the liquidation processes commenced prior to the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019, the requirements of this regulation as existing before such commencement, shall apply.]”

(Emphasis Supplied)

41. From above regulations, especially Regulation 39, we note that the Respondent No. 2 is well within his rights to take any legal action including filing Section 7 application for recovering the recoverable dues from any entity like the Respondent No. 1 herein. It cannot be the case of the Appellant that the Respondent/ Liquidator should not have taken legal recourse for clear default by the Respondent No. 1. We hold that the Respondent No. 2 / Liquidator was within his right and was rather obligated under the Code and relevant regulations to do so.

42. In view of above detailed observation, we find that all the issues raised by the Appellant sans merit and need to be rejected. We do not find any error in the Impugned Order.

43. The Appeal devoid of any merit stand rejected. No cost. I.A., if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

**[Mr. Indavar Pandey]
Member (Technical)**

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