NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 560 of 2025

[Arising out of the Order dated 14.02.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench) in CP (IB)-41(ND)/2024]

IN THE MATTER OF:

Subhash Chander Chauhan
R/o T-66, Near West Patel Nagar
Baljeet Nagar, Central Delhi
Delhi – 110028 **...Appellant**

Versus

1. **M/s Kaliber Associates Pvt. Ltd.**
(Through Liquidator Sh. Mohan Lal Jain)
B-1/12, 2nd Floor, Safdarjung Enclave
New Delhi – 110029 **...Respondent No.1**

2. **West Star Constructions Pvt. Ltd.**
Through Interim Resolution Professional
Office at: Building No. 3, Kh. No. 385
Plot No. 2, 100 ft. Road Ghitorni
MG Road, NA Delhi
Email ID: lekhrajbajaj@rediffmail.com **...Respondent No.2**

Present:

For Appellant	**:**	Mr. Saurabh Jain and Mr. Prayag Jain, Advocates
For Respondent	**:**	Mr. Abhishek Naik, Ms. Gulafsha Kureshi and Ms. Katyayani, Advocates for R2/RP. Mr. Anirban Bhattacharya, Ms. Priyanka Bhatt and Mr. Rajeev Choudhary, Advocates for R1.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This Appeal is being filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code") against the Impugned Order dated

14.02.2025 by National Company Law Tribunal (Adjudicating Authority), New Delhi in Company Petition No. (IB)-41(ND)/2024.

2. The Appellant is Suspended Director of Corporate Debtor (CD) (West Star Constructions Pvt. Ltd.) and was admitted into insolvency on 06.03.2024 under Section 7 of the Code. This was an ex-parte order and against that an Appeal was filed before this Tribunal in CA(AT)(Ins.) No. 666 of 2024 and vide order dated 23.09.2024 this Tribunal remanded the matter back to NCLT to determine and construe the real nature of the transaction and set aside the initiation of the CIRP order.

3. Thereafter, the Adjudicating Authority came to a conclusion on 14.02.2025 through the Impugned Order admitting Section 7 Application against the CD thereby initiating CIRP against the CD.

Brief Facts of the Case

4. The Corporate Debtor (CD) – West Star was engaged in providing consultancy services in the real estate sector. In October 2010, Respondent No.1-Kaliber approached the Corporate Debtor for consultancy services in relation to a commercial real estate project. Pursuant to a mutual understanding, Respondent No.1-Kaliber agreed to pay a sum of ₹1,00,00,000/- as a deposit (as claimed by the Appellant) to facilitate market research and analysis. On 20.11.2010, the Corporate Debtor (CD)-West Star received the said amount from Respondent No.1-Kaliber. Upon completion of the agreed services, the Corporate Debtor (CD)-West Star raised a proforma invoice dated 15.12.2012 (No. PI01/12-13) for an amount of ₹1,20,00,000/-,

stipulating that the final invoice would be issued upon receipt of payment. However, Respondent No.1-Kaliber failed to clear the said payment.

5. Separately in the CIRP proceedings against Kaliber, on 02.01.2020, the Adjudicating Authority, in I.A. No. 1524/C-II/ND/2019 in C.P. (IB) No. 228/2018, admitted an application filed by the Resolution Professional of M/s Kaliber Associates Pvt. Ltd. and initiated liquidation proceedings under Sections 33(1) and 33(2) of the Insolvency and Bankruptcy Code, 2016.

6. It is to be noted that on 18.07.2019, the Resolution Professional of Respondent No.1 had issued a letter to the Corporate Debtor (CD)-West Star seeking repayment of ₹1,00,00,000/-. Subsequently, on 20.07.2020, Respondent No.1-Kaliber issued a legal notice to the Corporate Debtor (CD)-West Star. Thereafter, on 04.01.2024, Respondent No.1-Kaliber filed an application under Section 7 before the Adjudicating Authority, registered as C.P. (IB) No. 41/ND/2024. Adjudicating Authority, vide ex-parte order dated 06.03.2024, admitted the application and initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. Aggrieved by the said order, the Appellant filed Company Appeal (AT) (Insolvency) No. 666 of 2024 before this Hon'ble Tribunal. Vide order dated 23.09.2024, this Tribunal had set aside the initiation of CIRP and remanded the matter back to the Adjudicating Authority for reconsideration to determine the true nature of the transaction.

7. Thereafter, on 01.10.2024, the Corporate Debtor (CD)-West Star, in its capacity as an Operational Creditor of Respondent No.1-Kaliber, submitted Form-C to the Liquidator for admission of its claim.

Submissions on behalf of the Appellant

8. The Appellant-Suspended Director of Corporate Debtor (CD)-West Star contends that the impugned order is in direct contravention of the binding directions of this Appellate Tribunal contained in its order dated 23.09.2024 in CA (INS) No. 666 of 2024. This Appellate Tribunal had specifically remanded the matter to the Adjudicating Authority with a mandate to reconsider the Section 7 application afresh, after duly examining the underlying transaction, the true nature of the alleged debt, and the maintainability of the claim in law. However, the Adjudicating Authority, without undertaking any examination of the underlying transaction or applying its mind to the character of the alleged liability, has erroneously proceeded to hold the Corporate Debtor in default and to admit the Section 7 Application.

9. The genesis of the present dispute lies in a proforma invoice dated 15.12.2012 issued by the Corporate Debtor - M/s West Star Constructions Pvt. Ltd. for "Research Services in Real Estate." Under the arrangement, the total contract value was agreed at ₹1.20 crore, against which Respondent No.1-Kaliber advanced a sum of ₹1 crore to the Corporate Debtor towards performance of the said services.

10. Appellant contends that, owing to tax implications and since the balance amount of ₹20 lakh was never paid; the Corporate Debtor was constrained not to raise a final invoice. Accordingly, only a proforma invoice for ₹1 crore was issued. Several years thereafter, Respondent No.1-Kaliber, acting first through its Resolution Professional and subsequently as

Liquidator, raised a demand of ₹1,00,00,000/- along with interest, alleging that the said amount constituted a financial debt. The sole basis for such claim was that, in the books of account of Respondent No. 1, the amount was reflected under the head short-term loans and advances. A Section 7 petition was filed on 04.01.2024, consequently the Adjudicating Authority vide ex-parte order dated 06.03.2024 admitted the Section 7 application. This admission order was challenged by the Appellant before this Hon'ble Appellate Tribunal in CA (INS) No. 666 of 2024. This Appellate Tribunal vide order dated 23.09.2024 set aside the admission order and remanded the matter to the Adjudicating Authority with a clear mandate to consider the objections raised by the Appellant, particularly on:

- Whether the alleged claim constituted a "financial debt" under Section 5(8) of the IBC;
- Whether the alleged default was supported by conclusive evidence;
- Whether the Section 7 application was maintainable in law.

11. Appellant contends that mere accounting entries or reliance on NeSL records cannot substitute the essential requirement of proving the underlying transaction. Onus lies upon Respondent No. 1 to establish the existence of a "financial debt" within the meaning of Section 5(8) of the IBC, 2016. The statutory definition necessarily requires a disbursement of money against consideration for the time value of money, which must be demonstrated through cogent and reliable evidence. Adjudicating Authority has erroneously relied upon R1's own balance sheet, as well as the alleged acknowledgment in the books of the Corporate Debtor, which in any event was not reflected under the head of long-term borrowings. Such reliance is wholly insufficient to

establish the existence of a "financial debt" within the meaning of Section 5(8) of the Code, as mere accounting entries cannot substitute the statutory requirement of demonstrating a disbursement against consideration for the time value of money.

12. Appellant raised objections:

- that the underlying transaction was not a loan but arose from a proforma invoice for services, which by its very nature cannot constitute a financial debt
- that no document evidencing disbursement against consideration for time value of money was ever placed on record; and
- that the balance sheet treatment in the Corporate Debtor's accounts reflected the amount as a security deposit/other liability, not as borrowing AA has not given clear findings on these core objections so Adjudicating Authority has acted contrary to the binding remand directions of the Appellate Tribunal dated 23.09.2024.

13. The Appellant contends that the Corporate Debtor is a financially solvent and viable entity. Apart from the disputed claim of Respondent No. 1, no other creditor lodged any claim before the Resolution Professional. The sole reliance on the present disputed claim demonstrates that the Section 7 proceedings were never initiated for resolution of genuine financial distress, but rather as a means of securing recovery of money. The legislative intent of the Insolvency and Bankruptcy Code, 2016, is not to provide an alternative forum for money recovery, but to ensure resolution and restructuring of a Corporate Debtor in genuine cases of insolvency. Appellant claims that this

has been reiterated by the Hon'ble Supreme Court in [1]**M/s Invest Asset Securitisation and Reconstruction Pvt. Ltd. v. M/s Girnar Fibres Ltd., Civil Appeal No. 3033 of 2022, 2022 SCC OnLine SC 808.**

Submissions on behalf of the Respondent

14. This Appellate Tribunal vide its judgment dated 23.09.2024 set aside the Order dated 06.03.2024 and remitted the matter for fresh consideration before the Adjudicating Authority with liberty to the Appellant to file a Reply before the Adjudicating Authority. It is relevant to note that this Appellate Tribunal while deciding the Appeal categorically held that "*We make it clear that our observations made in the Orders have been made only for purposes of deciding the Appeal and may not be treated any conclusive opinion on the issues which are open to consideration in Section 7 Application. Adjudicating Authority may proceed to decide Section 7 Application in accordance with law, without being influenced by any of the observations made in this Appeal.*" It was further observed by this Appellate Tribunal that the Adjudicating Authority is required to see nature of transaction for coming to conclusion that there is a Financial Debt.

15. It is the case of the Corporate Debtor that an amount of ₹1,00,00,000/- (Rupees One Crore Only) was paid by the Respondent No.1 as an advance towards consultancy services rendered by the Appellant for which a proforma invoice of ₹1,20,00,000/- (Rupees One Crore Twenty Lakhs Only) dated 15.12.2012 was raised and despite the completion of services and

[1] M/s Invest Asset Securitisation and Reconstruction Pvt. Ltd. v. M/s Girnar Fibres Ltd., Civil Appeal No. 3033 of 2022, SCC OnLine SC 808: it was reiterated that IBC cannot be used as a tool for debt recovery, but to ensure resolution and restructuring of a Corporate Debtor.

issuance of proforma invoice, the payment towards the said invoice of ₹20,00,000 remained outstanding.

16. Only pursuant to the directions issued by this Hon'ble Appellate Tribunal vide Judgment dated 23.09.2024, the CD in a calculated and motivated manner filed a claim on 01.10.2024 to the Liquidator of the Respondent No.1 for the outstanding balance of ₹20,00,000/- (Rupees Twenty Lakhs Only). The filing of claim pursuant to the Judgment of this Appellate Tribunal is clearly a calculated move to give legitimacy to the case of the Appellant that the said amount was received as an advance against the consultancy service rendered by the Appellant and accordingly the Appellant has set up his defence and filed his claim for remaining amount of ₹20,00,000/-. The timing and manner of the filing of such a claim clearly establish that the same was done solely to strengthen a false plea. The Appellant's claim that the said amount was an advance for consultancy services is unsubstantiated, unfounded and contradicts the financial records.

17. Further, the balance sheets of the Corporate Debtor reflect an amount of ₹1,00,00,000/- (Rupees One Crore Only) against the name of the Financial Creditor as "other long term liabilities". It is the case of the Corporate Debtor that the Corporate Debtor rendered consultancy services in real estate business for which Proforma Invoice for an amount of ₹1,20,00,000/- (Rupees One Crore Twenty Lakhs Only) was raised, out of which ₹1,00,00,000/- (Rupees One Crore Only) was received by the Corporate Debtor. It belies logic that after receiving ₹1,00,00,000/, the same amount is still maintained as a liability in the balance sheets of the Corporate Debtor. However, the total

amount raised in the Proforma Invoice is ₹1,20,00,000/- (Rupees One Crore Twenty Lakhs Only) and liability shown in balance sheets is ₹1,00,00,000/- (Rupees One Crore Only). Further, the Corporate Debtor never demanded the remaining balance amount of ₹20,00,000/- (Rupees Twenty Lakhs Only) from the Financial Creditor which makes the case of the Corporate Debtor false on the face of it. It is only on 01.10.2024 when the Corporate Debtor submitted its claim of ₹20,00,000/- (Rupees Twenty Lakhs Only) to the Liquidator of the Respondent No.1.

18. It is claimed that the public announcement was made on 05.01.2020 and the Corporate Debtor filed its claim of ₹20,00,000/- (Rupees Twenty Lakhs Only) after a period of more than four years. This belated filing of claim clearly makes the case of the Corporate Debtor false on the face of it. Further, the Liquidator of the Financial Creditor vide email dated 04.10.2024 duly replied to the Corporate Debtor and requested to provide certain information and documents. However, no reply was received on behalf of the Corporate Debtor. Accordingly, vide letter dated 16.10.2024 the Liquidator of the Financial Creditor rejected the claim of the Corporate Debtor which was never challenged by the Appellant.

19. It is further claimed that even otherwise, also no reliance can be placed upon proforma invoice as the proforma invoice was raised by the Appellant on 15.12.2012 and the Respondent no.1 had disbursed loan amount of ₹1,00,00,000/- (Rupees One Crores Only) to the Appellant on 20.11.2010. Assuming the version of the Appellant to be true it still belies logic that an amount of ₹1,00,00,000/- (Rupees One Crores Only) was given to the

Corporate Debtor on 20.11.2010 and invoice for an amount of ₹1,20,00,000/- (Rupees One Crore Twenty Lakh Rupees) was raised on 15.12.2012 i.e., after a long period of two years. The claim of the Appellant that an amount of ₹1,00,00,000/- was transferred to it with respect to the services rendered by the Appellant to the Respondent no. 1 is false on the face of it. The Appellant has failed to show that it ever performed any work for the Respondent.

20. It is contended that the Appellant/Corporate Debtor has failed to establish that the said amount was paid towards consultancy services to the Appellant. The Appellant failed to explain how the amount of advance could be shown in the balance sheet as long term liability and if way back in the year 2012 the financial creditor was liable to pay ₹20,00,000/- then how the balance sheet of year 2021 show long term liability as ₹1,00,00,000/-. The entire defence put forth by the Appellant is false, concocted and devoid of any cogent material in support.

21. It is contended that as per accounting standards "other long term liabilities" is classified as "trade payables" and "others" meaning thereby that amount due on account of goods purchased or services received in the normal course of business. However, in the present case it is not the case that the Respondent No.1/Financial Creditor extended any service or made any supply to the Appellant qua which the trade payables are there in balance sheets.

22. The Respondent No. 1 had disbursed an amount of ₹1,00,00,000/- (Rupees One Crore Only) to the Appellant as loan and advances which was repayable on demand and accordingly demands were raised vide letters dated

18.07.2019 and 20.07.2020. The said amount is also reflecting in the balance sheets as on 31.03.2018 and 18.01.2019 of the Respondent No. 1 against the name of the Appellant as "loan and advances to others". Further, the balance sheets of the Appellant are also reflecting the said amount against the name of the Respondent No. 1 as "other long-term liabilities" thereby, clearly establishing debt and default.

23. It is contented by the Respondent that the Hon'ble Supreme Court in [2]**Pioneer Urban Land and Infrastructure Limited and Ors. vs. Union of India (UOI) and Ors. (09.08.2019 - SC):** MANU/SC/1071/2019 [Para 70-71 @ Pg. 96] has interpreted "time value of money" and observed that "disbursal" must be money and must be against consideration for the "time value of money", meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money.

24. It is claimed that balance sheets are relevant for determining as to whether there was a financial debt or not. The balance sheets of the Corporate Debtor for the Financial Year ending on 31.03.2020, 31.03.2021 and 31.03.2022 under the head "other long-term liabilities" reflect that there is a financial debt which is relevant enough under Section 5(8) of the Code. Reliance is placed upon the decision of this Hon'ble Appellate Tribunal in [3]**G.S. Buildtech (P) Ltd. v. Ardee Infrastructure Venture (P) Ltd.,** 2021 SCC

---

[2] Pioneer Urban Land and Infrastructure Limited and Ors. vs. Union of India (UOI) and Ors. (09.08.2019 - SC): MANU/SC/1071/2019 [Para 70-71 @ Pg. 96] : interpreted "time value of money" and observed that "disbursal" must be money and must be against consideration for the "time value of money"

[3] G.S. Buildtech (P) Ltd. v. Ardee Infrastructure Venture (P) Ltd., 2021 SCC OnLine NCLAT 4979, [Para 10 @ Pg. 117]:by taking into consideration the Balance Sheet, the Adjudicating Authority can re-consider the question of Applicant being Financial Creditor or not.

OnLine NCLAT 4979, **[Para 10 @ Pg. 117]** wherein this Appellate Tribunal has held that *consideration of the balance sheet is relevant for determining as to whether there was a financial debt or not. Thus, by taking into consideration the Balance Sheet, the Adjudicating Authority can re-consider the question of Applicant being Financial Creditor or not.*

25. It is also claimed that to prove loan given by the Respondent no. 1 to the Corporate Debtor, there is no need to produce any document or agreement or written contract. Reliance is placed upon the decision of the Hon'ble NCLAT in [4]**Agarwal Polysacks Ltd. Vs. K. K. Agro Foods and Storage Ltd., Company Appeal (AT) (Insolvency) No.1126 of 2022** [Para 21 @ Pg. 134].

26. Respondent No.1 - Kaliber claims that the contention of the Appellant that Section 7 application cannot be filed for the purpose of recovering a debt is incorrect and misconceived. By virtue of Explanation II to Section 11 of the IBC, the Applicant is entitled to initiate Corporate Insolvency Resolution Process against another Corporate Debtor which even as per the decision of the Hon'ble Supreme Court of India in [5]**Manish Kumar v. Union of India, (2021) 5 SCC,** [Paras 292 & 310 @ pg. 302] is aimed at enabling the Corporate Debtor to recover its dues from its debtors. Even if the application under Section 7 of the IBC has been filed for the purpose of recovery, then also the

---

[4] Agarwal Polysacks Ltd. Vs. K. K. Agro Foods and Storage Ltd., Company Appeal (AT) (Insolvency) No.1126 of 2022 [Para 21 @ Pg. 134]...no need to produce any document or agreement or written contract

[5] Manish Kumar v. Union of India, (2021) 5 SCC, [Paras 292 & 310 @ pg. 302]...enabling the Corporate Debtor to recover its dues from its debtors even if the application under Section 7 of the IBC has been filed for the purpose of recovery, then also the same is not barred by law

same is not barred by law in view of the decision of the Hon'ble Supreme Court of India in *Manish Kumar (supra)*. Reliance is further placed on the decision of the Hon'ble NCLAT in [6]**Satish Kumar v. Lion Buildcon and Anr., Company Appeal (AT) (Ins) No. 1723 of 2024** [Para 41 @ Pg.387].

27. Respondent No.1 – Kaliber also opposes the reliance of the Corporate Debtor on the Judgment of the Hon'ble Supreme Court in [7]**Vidarbha Industries Power v. Axis Bank Limited** contending that the proceedings under Section 7 of IBC are liable to be dismissed if it is established that the Corporate Debtor is a going concern and solvent company. Respondent No.1 - Kaliber contends that this Hon'ble Appellate Tribunal in [8]**Edelweiss Asset Reconstruction Company Ltd. v. Takshashila Heights India Pvt. Ltd.,** Company Appeal (AT) (Insolvency) No. 2261 of 2024 **[Paras 42 & 46 @pg. 417 & 422],** has held that the arguments that the Corporate Debtor being a going concern or a viable entity does not absolve the Corporate Debtor from its liabilities to repay the outstanding dues of the Financial Creditor, once the NCLT is satisfied that the default has occurred, there is hardly any discretion left with the NCLT to refuse admission of the Application under Section 7 IBC. Since in the present case the debt and default on the part of the Corporate

[6] Satish Kumar v. Lion Buildcon and Anr., Company Appeal (AT) (Ins) No. 1723 of 2024

[7] Vidarbha Industries Power v. Axis Bank Limited

[8] Edelweiss Asset Reconstruction Company Ltd. v. Takshashila Heights India Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 2261 of 2024 [Paras 42 & 46 @pg. 417 & 422]: That a Corporate Debtor being a going concern or a viable entity does not absolve it from its liabilities to repay the outstanding dues of the Financial Creditor, once the NCLT is satisfied that the default has occurred

Debtor has already been established, therefore, the Adjudicating Authority has rightly admitted Section 7 application.

Appraisal

28. Heard counsels of both sides and also perused material placed on the record.

29. We note that the present Appeal has been preferred by the Appellant/SD of the Corporate Debtor – West Star challenging the Order of the Adjudicating Authority admitting the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") filed by the Respondent No.1/Financial Creditor - Kaliber. Earlier, this Appellate Tribunal vide Judgment dated 23.09.2024 had set aside the Order dated 06.03.2024 and remitted the matter back for fresh consideration, clarifying that observations in that Order were only for the limited purpose of deciding the Appeal and that the Adjudicating Authority must independently determine whether the transaction in question constituted a "financial debt" under Section 5(8) of the IBC. Upon remand, the Adjudicating Authority, after considering the rival pleadings and documents, admitted the Section 7 Application. The present Appeal assails that admission.

30. Before proceeding further, we recapitulate the submissions of the appellant herein as under. The Appellant contends that the sum of ₹1,00,00,000/- received from Respondent No.1 – Kaliber was not a loan but an advance towards consultancy services rendered in the real estate business. A proforma invoice dated 15.12.2012 for ₹1,20,00,000/- was raised by Respondent No.2 – West Star, and ₹20,00,000/- remained unpaid. The

Appellant submits that the subsequent filing of a claim for ₹20,00,000/- before the Liquidator of Respondent No.1 on 01.10.2024 was in furtherance of this understanding, but the Liquidator wrongfully rejected the claim. It is claimed that balance sheet entries showing ₹1,00,00,000/- as "other long-term liabilities" were only accounting treatments, not admissions of financial debt. The Respondent's interpretation of such entries as loan liability is misplaced. The Appellant relies on Hon'ble Supreme Court in [1]**M/s Invest Asset Securitisation and Reconstruction Pvt. Ltd.**, where it was held that the purpose of the IBC is to *"bring the corporate debtor to its feet"* and not to be misused as a tool for recovery of dues. Appellant contends that the action of the Liquidator in pursuing the Section 7 application demonstrates an attempt to misuse the IBC framework for recovery of an alleged claim, in direct contravention of the legislative objective. The Appellant also relies on [7]**Vidarbha Industries Power v. Axis Bank Ltd.**, contending that even if a debt exists, the Adjudicating Authority has discretion not to admit the Section 7 Application, particularly when the Corporate Debtor is a solvent and going concern.

31. The Respondent No.1 - Kaliber disputes the consultancy services narrative, contending that no evidence of services rendered has been produced. It is argued that the proforma invoice of 2012 is a sham document relied upon belatedly to convert a loan transaction into a services transaction. The Respondent highlights that the amount of ₹1,00,00,000/- was disbursed on 20.11.2010, much prior to the alleged invoice of 2012, which belies the claim of advance for services. The Respondent submits that the balance

sheets of the Corporate Debtor consistently reflect Rs. 1,00,00,000/- as "other long-term liabilities" against the Financial Creditor. Relying on [3]**G.S. Buildtech (P) Ltd. v. Ardee Infrastructure Venture (P) Ltd**., it is urged that balance sheet entries are reliable evidence of existence of financial debt. The Respondent relies on [2]**Pioneer Urban Land v. Union of India and Agarwal Polysacks Ltd. v. K.K. Agro Foods**, to argue that absence of a formal loan agreement is not fatal, and what matters is disbursal of money against consideration for time value of money. It is further submitted that demand notices were issued on 18.07.2019 and 20.07.2020. Debt and default being established, the Adjudicating Authority had no discretion to reject the Section 7 Application. Reliance is placed on [8]**Edelweiss ARC v. Takshashila Heights India Pvt. Ltd.**, holding that solvency of the Corporate Debtor is irrelevant once debt and default are proved

Issues for Consideration

32. The issues which arise for determination are whether the sum of ₹1,00,00,000/- disbursed by Respondent No.1 constituted a "financial debt" under Section 5(8) of the IBC and whether the Corporate Debtor's defence of "consultancy advance" is credible and whether the Adjudicating Authority erred in admitting the Section 7 Application despite the plea of solvency?

33. With respect to nature of transaction, we find that the material on record establishes that the Respondent disbursed ₹1,00,00,000/- on 20.11.2010. The Corporate Debtor has failed to produce any documentary evidence—such as consultancy agreements, invoices contemporaneous to the transaction, or tax records—showing that services were rendered in

consideration. On the contrary, the balance sheets of the Corporate Debtor for multiple financial years continuously record the said sum as "other long-term liabilities" against the name of the Financial Creditor. As held in **G.S. Buildtech (supra)**, such entries are reliable indicators of existence of financial debt. The disbursal, coupled with its classification as a liability, satisfies the requirement of "time value of money" as explained by the Hon'ble Supreme Court in **Pioneer Urban (supra)**. Accordingly, the transaction qualifies as a **financial debt** under Section 5(8) IBC.

34. Now we briefly delve into the contention of the Appellant that the object of the Code is revival and resolution of genuinely insolvent companies, not recovery of money and places its reliance on the Hon'ble Supreme Court in [9]**Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17** and [1]**Invest Asset Securitisation and Reconstruction Pvt. Ltd. v. Girnar Fibres Ltd.** has emphasized that the IBC is not a substitute for recovery forums. We note that by virtue of Explanation II to Section 11 of the IBC, the Respondent-1/FC is entitled to initiate Corporate Insolvency Resolution Process against another Corporate Debtor which is supported by the decision of the Hon'ble Supreme Court of India in [5]***Manish Kumar*** which supports the case of the Corporate Debtor to recover its dues from its debtors. Even if the application under Section 7 of the IBC has been filed for the purpose of recovery, then also the same is not barred by law.

---

[9] Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17: The Court stressed that the Code's object is revival of the Corporate Debtor.

35. It is also noted that appellant has tried to place reliance on [7]**Vidarbha** which does not support the case of the Appellant. The Vidarbha Judgment specifically says that *"Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition".* Since in the present case the debt and default on the part of the Corporate Debtor has already been established, therefore, we cannot find any infirmity in the decision of the Adjudicating Authority in admitting Section 7 application.

36. With respect to defence of this being a consultancy fees the Appellant's case rests upon a proforma invoice dated 15.12.2012, raised nearly two years after the disbursal. No supporting evidence of actual consultancy work performed has been filed. The timing of the Appellant's belated claim before the Liquidator on 01.10.2024, only after remand by this Tribunal, further weakens the arguments relating to consultancy. The Liquidator's rejection of the claim was never challenged. The consultancy plea thus appears to be an afterthought, lacking credibility and thus cannot be accepted.

Conclusion

37. Having regard to the above findings, we hold as follows:

- The disbursal of Rs. 1,00,00,000/- by the Financial Creditor is a financial debt.
- The Appellant has failed to substantiate its defence of consultancy advance.

- Debt and default stand established, and admission of the Section 7 Application by the Adjudicating Authority is in accordance with law.

Orders:

38. No interference is called for with the impugned Order of the Adjudicating Authority admitting the Section 7 Application. The Appeal is dismissed. No order as to costs.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
October 17, 2025.

pawan