



**In the National Company Law Tribunal  
Division Bench, (Court-I), Kolkata**

**CP(IB) No. 69/KB/2024**

*An application under Section 7 of the Insolvency & Bankruptcy Code, 2016  
and read with Rule 4 of the Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016.*

**In the Matter of:**

**Sanjay Kumar Bhuwalka**

**....Applicant / Financial Creditor**

**Vs.**

**Sulojay Realty Private Limited**

**.... Corporate Debtor / Respondent**

**Date of Pronouncement of order: 13.12.2024**

**Coram:**

**Smt. Bidisha Banerjee : Member (Judicial)**

**Shri Balraj Joshi : Member (Technical)**

**Counsel appeared physically / through video Conferencing**

Mr. Siddhant Kumar, Adv. ] For the Financial Creditor  
Mr. Arkaprava Sen, Adv. ]  
Ms. Urmila Chakraborty, Adv. ]  
Mrs. Sayntee Dutta, Adv. ]  
Mr. S. Kar, Adv. ]  
Ms. M. Chandok, Adv. ]

Mr. Joy Saha, Sr. Adv. ] For the Corporate Debtor  
Mr. S.P. Chattopadhyay, Adv. ]  
Ms. Madhuja Barman, Adv. ]  
Ms. Tanvi Luhariwala, Adv. ]

**O R D E R**

**Per Bidisha Banerjee, Member (Judicial):**

1. The Court convened through hybrid mode.

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2. Ld. Sr. Counsel /Counsel for the parties were heard at length.
3. This Petition has been preferred by the Petitioner seeking initiation of Corporate Insolvency Resolution Process ("CIRP") in respect of the Respondent / Sulojay Realty Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code") regarding an outstanding debt of INR 7,54,79,326/-.
4. It is submitted that the debt has been admitted by the Respondent in its Annual Report for the Financial Year ("FY") 2021-22 and FY 2022-23, which has been signed by the current management of the Respondent. The Respondent defaulted in repayment on 7<sup>th</sup> March, 2024. In the light of the admitted debt and default of the Respondent, this Petition ought to be allowed.

**5. Submissions of the Applicant:**

- 5.1. The Respondent was incorporated on 20 March 2021 under the Companies Act. 2013. The Applicant was a Director and a majority shareholder of the Respondent since its inception, and continued to hold this position till June 2022.
- 5.2. In his capacity as the Director and shareholder, for the purpose of augmenting resources and developing the business of the Respondent, the Applicant advanced a total sum of INR 7,47,32,000/- (the "Loan") in several tranches between March 2021 to May 2022 The rate of interest on the Loan was mutually agreed to be 12% p.a. The details of disbursement are set out below:

Date	Cheque Number/ RTGS	Amount (in INR)
03.04.2021 <sup>1</sup>	Cheque No. 00791	4,50,00,000/-
16.04.2021 <sup>2</sup>	Cheque No. 00792	63,00,000/-
08.06.2021 <sup>3</sup>	Cheque No. 000012	1,40,00,000/-
08.06.2021 <sup>4</sup>	Cheque No. 000794	71,00,000/-
29.04.2022 <sup>5</sup>	HDFCR52022042964885723	8,32,000/-
07.05.2022 <sup>6</sup>	HDFCR52022050766725457	15,00,000/-
<b>TOTAL</b>		<b>7,47,32,000/-</b>

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- 5.3. In June 2021, the Respondent, in partial discharge of its liability, repaid only an amount of INR 1,85,01,399/- to the Applicant. Since then, no instalment has been paid to the Applicant against the outstanding liability under the Loan.
- 5.4. Thereafter, in June 2022, the Applicant and other shareholders of the Respondent sold their shares to **Exclusive Motors Pvt. Ltd.** ("EMPL"), a company under the control and management of Mr. Achal Kumar Jindal and Mr. Satya Prakash Bagla. Mr. Jindal and Mr. Bagla, the current Directors of the Respondent, had assured the Applicant that they will repay the debt owed to the Applicant after gaining control of the Respondent. However, the Respondent even under its new management, did not take any steps to repay the Loan.
- 5.5. In its Annual Report for the FY 2021-22, the Respondent has acknowledged the outstanding principal and interest of 12% p.a. payable to the Applicant towards the Loan.
- 5.6. Thereafter, even in the Annual Report for FY 2022-23, the Respondent has explicitly acknowledged receipt of the Loan. It categorically records the total outstanding liability of the Respondent to the Applicant as INR 6,43,51,360/- as on 31 March 2023. Notably, this Annual Report has been prepared under the instructions of the current management and bears the signatures of Mr. Jindal and Mr. Bagla.
- 5.7. Despite the clear admission of the Loan owed to the Applicant and the liability to repay, the Respondent did not satisfy its outstanding liability to the Applicant. Accordingly, the Applicant addressed a notice on 29 February 2024 to the Respondent and its existing management, demanding repayment of the outstanding Loan amount of INR 7,54,79,326/-, inclusive of interest, from the Respondent on or before 7 March 2023 ("the Demand Notice"). However, despite receipt of the Notice, the Respondent has not repaid

the entire debt owed to the Applicant and the default continues till date.

5.8. In addition to the Respondent's own admissions in its audited balance sheets, the record of financial information procured from the Information Utility also discloses that the Respondent has defaulted in the repayment of the **financial debt of INR 7,54,79,326/-** owed to the Applicant.

5.9. In view of the above, the Applicant has been constrained to file this Petition seeking initiation of CIRP in respect of the Respondent.

**6. Ld. Counsel for the Petitioner would forcefully argue that:**

6.1. This Petition deserves to be allowed as the Respondent has admitted its debt and the subsequent default in respect of the financial debt.

6.2. Referring to the Reply and oral submissions of the Respondents, it was submitted that the Respondent has objected to the Petition principally on the ground that the Loan transaction is a disputed debt, and consequently, it is not liable to repay the Loan to the Applicant and that the admission of liability in its Annual Reports does not demonstrate the existence of a debt, but the objections raised by the Respondent are untenable and liable to be rejected for the reasons that: (i) financial debt and default under the Loan are admitted; (ii) any dispute in respect of the debt is immaterial for adjudication of this Petition; and (iii) even otherwise, contentions raised by the Respondent are meritless and clearly an afterthought.

**7. Contentions of the Respondents:**

7.1. The Respondent Company was incorporated on 20<sup>th</sup> March, 2021 by the Bhuwalka family through Mr. Sanjay Kumar Bhuwalka.

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7.2. It was a closely held company controlled and managed by the Bhuwalka and Agarwal family. The Directors and Shareholders of the Respondent Company as on 31<sup>st</sup> May, 2022 were as follows:

<b>Nem of the Shareholder</b>	<b>Shareholding</b>		
Sanjay Kumar Bhuwalka	26,99,900	Equity	Shares
	consisting 90%		
Ranjan Kumar Senapati	100	Equity	Shares
	constituting .003%		
Kanta Agarwala	2,00,000	Equity	Shares
	constituting 6.6%		
Suresh Kumar Agarwal	1,00,000	Equity	Shares
	constituting 3.33%		
<b>TOTAL</b>	<b>30,00,000</b>	<b>Equity</b>	<b>Shares</b>
	<b>constituting 100%</b>		

7.3. On the basis of a Share Purchase Agreement dated 2<sup>nd</sup> June, 2022, the entire shareholding of the Bhuwalka and the Agarwal family in the Respondent Company was transferred to the Exclusive Motors Private Limited.

7.4. At all material times the Bhuwalka and the Agarwal family on one hand and the Bagla family on the other hand, shared very close and proximate relationships which deteriorated over time and the said families are at present inimical and hostile to each other.


7.5. The present claim is the fall-out of the deteriorating family relationships between the said Bhuwalka / Agarwal Family and Bagla family.

7.6. The alleged loans being sought to be recovered in the present petition are in fact paper transactions whereby the petitioner being an erstwhile director of the Respondent Company is seeking to manipulate and take advantage of “window dressed” accounts of the Respondent Company during the time when he was the person in the management and control of the Respondent Company and the

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principal shareholder thereof. Between 3<sup>rd</sup> April, 2021 to 07<sup>th</sup> May, 2022, Sanjay Kumar Bhuvalka was the Director of the Respondent Company when the sums of monies were given as loan to the Respondent Company.

7.7. The books, records, documents and Board Meetings of the Respondent Company do not reveal and / or disclose the reasons why the said sums of monies were allegedly advanced by the petitioner to the Respondent Company.

7.8. It is apparent from the books of accounts of the Respondent Company that during the period in which it was under the control of the Bhuvalka and Agarwal family, expenses have been incurred towards some alleged architectural fees with respect to a property over which the Respondent Company had no right, title or interest. It is evident that in reality, no such architectural fees were ever incurred by the Respondent Company. The said transaction was merely a sham transaction to white-wash fraudulent transactions of siphoning off funds from the Respondent Company by the petitioner and his family.

7.9. It would be manifest from the said Share purchase Agreement dated 2<sup>nd</sup> June, 2022, the petitioner Sanjay Kumar Bhuvalka together with the members of the Agarwal Family and his nominees sold their entire shareholding in the Respondent Company to the said Exclusive Motors Private Limited.


7.10. In addition to the payment of Sum of Rs. 3,24,00,000, the said Exclusive Motors Private Limited and Mr. Satya Prakash Bagla have made payment through the Respondent Company of a sum of Rs. 55.66 Crores to the said Kanta Agarwala and Suresh Agarwala against repayment of purported loan granted by them to the Respondent Company.

7.11. Thus in terms of the said Share Purchase Agreement dated 2<sup>nd</sup> June, 2022 and in discharge of the entire obligation of the Respondent Company to the said Kanta Agarwala and Suresh

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Agarwala, the Respondent and / or Exclusive Motors Private Limited and / or Mr. Satya Prakash Bagla have made payment of a total sum of Rs. 59.90 Crores to the Petitioner and / or his nominee as stated in the immediately preceding paragraphs.

7.12. The said Respondent Company is neither insolvent nor in requirement of any resolution under the aegis of the IBC.

7.13. That there was never any agreement between the petitioner and the Respondent Company to repay the said purported loan of Rs. 5,62,32,000/- (Rupees Five Crore Sixty-Two Lakh Thirty-Two Thousand only).

7.14. The Respondent Company is the owner of immovable property particulars whereof are as follows:

7.14.1. Plot No. 5, Block No. 205A Fire Bridgade Lane, Known as 20 Fire Brigade Lane, New Delhi – 110 001 admeasuring 929 Sq Yards.

7.14.2. The valuation of the said property is approximately Rs. 66,52,14,769/- as on 26<sup>th</sup> May, 2022.

7.14.3. The valuation of the assets of the Respondent Company are far in excess of the purported claim of the petitioner

7.15. The Petitioner being the promoter, director, erstwhile majority shareholder and the person in the management and control for he Respondent Company during the period of creation for the alleged debt has no *locus standi* or right to maintain the present petition for recovery of a purported debt for the creation of which the petitioner himself is liable.

7.16. That the said purported claim is completely bogus for:

7.16.1. There is no Board Resolution of the Respondent Company permitting, authorising or empowering the acceptance and / or creation of the said purported loan.

7.16.2. No approval of the shareholders of the Respondent Company were ever obtained in a General Meeting or otherwise

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with regard to the creation or of the acceptance of the said purported loan.

7.16.3. The Respondent Company is taking appropriate steps to remove and / or delete any alleged indebtedness to the petitioner on account of the said fraudulent and fictitious loan from its books, records and financial statements.

7.16.4. The said purported loan consequently does not have the commercial effect of borrowings.

7.16.5. The Petitioner is not a financial creditor and the respondent is not a corporate debtor of the petitioner. There is no debt or any financial debt owed by the respondent to the petitioner and no proceedings could have been instituted under the provisions of IBC as against the respondent. The said application is liable to be and should be summarily dismissed.

8. Ld. Sr. Counsel Mr. Joy Saha appearing for the Respondents, in course of arguments would refer to the following decisions for the propositions noted against each:

8.1. **M/s. SS Engineers Vs. Hindusthan Petroleum Corporation Limited & Ors., Civil Appeal No. 4483 of 2022** to contend that *“NCLT exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum and it is not the object of the IBC that should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.”*

8.2. **K.D. Sharma Vs. Steel Authority of India Limited and Ors., reported in (2008) 12, SCC 481**, which deals with disclosures of all material fact without any reservation even if, they are against a particular party.

8.3. **Prestige Lights Ltd. Vs. State Bank of India, reported in (2007) 8 SCC 449**, which again deals with suppression of material fact.



8.4. **Radha Exports (India) Private Limited Vs. K.P. Jayaram and Anr., reported in (2020) 10 SCC 538**, which deals with *prima facie* onus to show existence of a legally recoverable debt which is not barred by limitation.

8.5. **Narendra Promtoers & Fincon Private Limited Vs. Vinline Engineering Private Limited, in CP (IB) No. 749/KB/2020**, NCLT, Kolkata Bench held that financial debt needs to satisfy the following essential conditions:

*“8 (i) Disbursement of loan must be there;*

*8(ii) Disbursement has been made for a consideration for time value of money; and*

*8 (iii) The debt, wholly or partly, **has become due and payable** and is not paid by the Corporate Debtor means committed default;*

8.6. Reference is made to **Dakalia Brothers Private Limited Vs. Saraf Glass Private Limited in CP (IB) No. 619/KB/2020 of NCLT, Kolkata Bench** to contend that the nature of transaction or the relationship established between the parties out of such transaction should be recognizable. In CP (IB) No. 619/KB/2020, NCLT Kolkata Bench held that


*“On perusal of the bank statement submitted by the Financial Creditor, it can be corroborated that a sum of Rs. 10,00,000/- (Rupees Ten Lakh only) was disbursed b the Financial Creditor to the Corporate Debtor on 23<sup>rd</sup> June, 2015. However, from such disbursal we are unable to recognize the nature of transaction, or the relationship between the parties out of such transaction.”*

8.7. **Techma Engineering Enterprise Private Limited Vs. Millenium Forge & Engineers Pvt. Ltd., Company Petition (IB) No. 134/KB/2023** by Kolkata Bench of NCLT where having considered the decisions in **Desana Impex Limited and Global Credit Capital**

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**Limited;** it was held that issuance of TDS certificate does not amount to acknowledgment of liability by the Corporate Debtor and in absence of any document or instrument governing contract, that no inference can be drawn that money was advanced as a loan and the same shall qualify as a financial debt under Section 5 (8) of IBC.

8.8. **Global Credit Capital Limited and Anr. Vs. Sach Marketing Private Limited & Anr., reported in 2024 SCC OnLine SC 649;** where it was held that while deciding whether a debt is a financial debt or an operational debt, it is necessary to ascertain the real nature of the transaction reflected in the writing.

8.9. **Vidarbha Industries Power Limited Vs. Axis Bank Limited reported in (2022) 8 SCC 352;** where the Hon'ble Supreme Court of India held as under:

*“There can be no doubt that a corporate debtor who is in the red should be resolved expeditiously, following the timeline in the IBC. No extraneous matter should come in the way. However, the validity and overall financial health of the corporate debtor are not extraneous matters.”*

8.10. **Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal and Anr. ("Bishal Jaiswal"),** which holds that while considering admissions in the balance sheet, the Court is bound to consider any caveats or notes appended to the balance sheet.

9. Per contra, Ld. Counsel for the Petitioner would cite the following decisions:

**9.1. On the proposition that acknowledgment in the balance sheets amount to admission of liability;**

**9.1.1. ESPN Software India Pvt. Ltd. Vs. Modi Entertainment Network Ltd., 2012 SCC Online Del 3836.**

**9.1.2. Bhajan Singh Samra Vs. M/s. Wimpy International Ltd. 2011 SCC OnLine Del 4888.**

**9.1.3. Shahi Exports Pvt. ltd. and Anr. Vs. CMD Buildtech Pvt. Ltd., 2013 SCC OnLine Del 2535.**

9.2. To contend that Loans advanced by a Director constitute financial debt and absence of a written agreement is immaterial if circumstances otherwise demonstrate disbursal the following decisions were placed:

9.2.1. **Mrs. Jayanthi G. Ravi Vs. Chemizol Additives Pvt. Ltd., 2022 SCC Online NCLAT 916;**

9.2.2. **Mahmod Alam Khan V. Ahmed Alam Khan and Anr., 2023 SCC OnLine NCLAT 475;**

9.2.3. **Shailesh Sangani V. Joel Cardoso and Anr., 2019 SCC OnLine NCLAT 52;**

9.2.4. **Anchor Leasing Pvt. Ltd. v. Euro Ceramics Limited, dated 25<sup>th</sup> February, 2019, in CP No. 66/IBC/NCLT/MB/MAH/2018;**

9.2.5. **M/s. Agarwal Polysacks Limited v. M/s. KK Agro Foods and Storage Limited, Company Appeal (AT) (Insolvency) No. 1126/2022;**

9.2.6. **Satish Balan v. Neeta Navin Nagda and Anr., 2023 SCC OnLine NCLAT 1999;**

9.3. Disputes qua the debt are immaterial so long as the debt is due and payable, the following judgments have been placed:

9.3.1. **Suresh Kumar Reddy V. Canara Bank and Ors., Civil Appeal No. 7121/2022;**

9.3.2. **Innovative Industries Limited v. ICICI Bank and Anr., (2018) 1 SCC 407;**


10. Ld. Counsel for the Petitioner in course of hearing would submit that:

10.1. It is settled law that an acknowledgement of debt in the balance sheets of a company is *per se* an admission of liability. Ld. Counsel would submit that the Respondent has erroneously relied upon the judgment of the Supreme Court in **Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal and Anr. ("Bishal Jaiswal")**," which

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holds that while considering admissions in the balance sheet, the Court is bound to consider any caveats or notes appended to the balance sheet. It was argued that this judgment does not advance the case of the Respondent. In this case, there are neither any caveats/ notes that would contradict the unequivocal admission of the debt of the Respondent, nor has any been pointed out. In fact, the judgment in **Bishal Jaiswal** reiterates and reaffirms that in absence of a contrary note or caveat, an unequivocal admission in balance sheets is complete proof of debt. This legal principle was once again reaffirmed by the Hon'ble Supreme Court in **Vidyasagar Prasad Vs. UCO Bank and Anr.**, where the Hon'ble Court held that inclusion of debt in balance sheet amounts to admission of liability.

10.2. Further, that the Loan amount has not been fully repaid till date and thus, the Applicant's financial debt still subsists against the Respondent.

10.3. That the Respondent seeks to explain the admission in the balance sheets for the FY 2022-23 prepared under the current management by relying upon Section 28 (iv) of Income Tax Act, 1961 and contends that this provision prevents it from correcting its accounts. Whereas a perusal of the provisions of would clearly show that there is no prohibition under law that would prevent the Respondent from correcting its accounts, if so desired.

10.4. It is argued that the Respondent seeks to evade its liability by arguing that the Loan transaction is a sham. Relying on the judgment of the Hon'ble Supreme Court in **Global Credit Capital Limited and Anr. Vs. Sach Marketing Private Limited and Anr. ("Global Credit")** Respondent contends that this Tribunal must consider the "real nature of transaction.

But that in the said case, the Hon'ble Court delved into the interpretation of agreements / letters to determine whether the concerned transaction constituted a "financial" or an "operational" debt. It is in that context that the Hon'ble Court held that the

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Adjudicating Authority must consider the real nature of the transaction, and not otherwise. Hence the said decision has no manner of application.

10.5. It was asserted that the financial health of the Respondent is deteriorating and is materially compromised. There are serious doubts as to the continuance of Respondent as a going concern. Hence, ratio of **Vidarbha** is not all applicable and cannot apply here. To that effect, it is submitted that

10.5.1. The immovable Property and all current assets of the Respondent are charges and have been given as collateral security for the following loans / credit facilities amounting to approximately INR 51 Crores, while its paid up capital is only INR 3 Crores:

Name of Borrower	Relation of Respondent with Borrower	Lender	Facility
Sulojay Realty Private Limited – Respondent	N/A	ICICI Bank	Term Loan of INR 13 Crores approximately
Exclusive Motors Pvt. Ltd.	Holding Company of Respondent	ICICI Bank	Term Loan of INR 15 Crores
Exclusive Motors Pvt. Ltd.	Holding Company of Respondent	ICICI Bank	Dropline overdraft facility of INR 8 Crores
Satya Prakash Bagla	Director of the Company	ICICI Bank	Dropline overdraft facility of INR 15 Crores

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10.5.2. The Respondent has taken a loan of INR 9 Crores from its Holding Company, Exclusive Motors Pvt. Ltd.

10.5.3. The Respondent has also taken an interest bearing loan of INR 40 Crores from its related company, Exclusive Capital Limited, an NBFC which is also under the management of Mr. Jindal and Mr. Bagla.

10.5.4. The Respondent has also not generated any revenue from its operations in FY 2022-23 has incurred substantial losses.

**Analysis and findings:**

11. We have carefully noted the rival contentions and perused records. We have considered the submissions of the Respondents that

11.1. There is no written Agreement recording the loan and in absence of a written agreement "Loan" is not proved.

11.2. The Applicant has executed share purchase Agreement dated 02.06.2022 towards settlement of the loan amount;

11.3. The debt has been fully discharged by payment to third parties.

11.4. The balance cannot be rectified;

11.5. The loan transaction is sham;

11.6. Respondent is in good financial health and therefore, should not be put into CIRP in view of the law laid down in **Vidarbha** (Supra);

**Our Revelations:**

12. **In the Audited Balance Sheet of the Respondent Company, acknowledgment of Unsecured Loan from a Director and acknowledgment of balance outstanding establishes a financial debt.**

12.1. The transaction question with the Petitioner is reflected in the Annual Report 2021-22 with the audited certificate as follows:

12.2.

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<b><u>Notes Forming Part of Financial Statement</u></b>	
<b>Note-5 Long Term Borrowings</b>	
<b><u>Unsecured</u></b>	
(Amount Rs. In Lakh) As at 31 <sup>st</sup> March, 2022	
Loan From Director	544.59
Laon From Corporate s & Other Parties	500.00
Loan From Shareholder	5,516.00
<b>Total</b>	<b>6,560.59</b>

12.3. The Transaction with related parties are furnished below:

<b>Name of related party</b>	<b>Nature of Transaction</b>	<b>Amount (Rs. In Lakhs)</b>
<b>Sanjay Kumar Bhuwarka</b>	Interest Expenses	64.57
	Loan Taken during the year	729.60
	Repayment during the year	185.01
	Balance Outstanding end of the year	544.58

12.4. Thus the loan taken during the year is 729.60 Lakhs of which repayment is reflected as 185.01 Lakhs keeping a balance outstanding as 544.58 Lakhs.

12.5. Annexure P-4 is a legal notice sent on 29.02.2024 on behalf of the Petitioner, seeking repayment of a sum **Rs. 7,54,79,326/-** towards loan disbursed to **Sulojay Realty Private Limited** / the

Corporate Debtor. There is no denial in the reply that the balance sheet shows an outstanding and repayable.

**13. Acknowledgment of balance outstanding establishes debt and default.**

13.1. **Md. Alam Khan** (Supra) Hon'ble NCLAT noted and held as under:

*"76. To put it succinctly, it is not the plea of the 'Corporate Debtor', before the 'Adjudicating Authority', that the 'Directors' of the 'Company', who money infused had to the 'Corporate Debtor' (whenever required), the said 'Money', was not to be 'repaid' because of the fact that it had no 'fixed period/term'.*

*77. According to the 'Black's Law Dictionary', the term 'Loan', means 'Lending', delivery by one party to and receipt by another party of a 'Sum of Money', upon a 'Agreement', express or implied to repay it with or without interest.*

*78. It is to be remembered that the essential requirement of 'Loan', is 'advancement of money' (or some 'Article'), upon an 'Undertaking', that it shall be returned and it may or may not carry any 'Interest'.*

*79. Where a 'Loan', was shown as 'Debt', in the 'report' of the 'Directors to the Shareholders', while submitting the 'Auditing Accounts', it is held that even though, the managing 'Agent', had acted beyond its 'Powers', while contracting 'Loan', if there was a ratification "of 'Loan', by the 'Directors', it will bind the 'Company'.*

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*90. It transpires that the total 'Unsecured Loans', provided by the Respondent/Financial Creditor/Petitioner', to the 'Corporate Debtor', duly acknowledged', in the 'Audited Balance Sheet', as on 31.03.2020 and on 31.03.2021, is as under:*

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<i>Year ending</i>	<i>Total Unsecured Loans as per Audited Balance Sheet (Rs.)</i>	<i>Loan advanced by the Financial Creditor, as disclosed in the Audited balance Sheet (Rs.)</i>
<i>Financial Year 19-20</i>	<i>12,50,34,119/-</i>	<i>9,37,87,064/-</i>
<i>Financial Year 20-21</i>	<i>16,64,47,049/-</i>	<i>13,84,72,064/-</i>

91. In regard to the Appellant's plea, that the 'Long-term Borrowings', shown in the 'Balance Sheet' of the 'Corporate Debtor', were not 'disbursed', by the 1 Respondent/Financial Creditor/'Petitioner', against 'Interest' or 'Consideration', for 'Time Value of Money', and therefore, does not amount to a 'Financial Debt', as per the I & B Code, 2016, it is relevantly pointed out by this 'Tribunal', the 'Sum Loaned', by a 'Director' of a 'Company'/Corporate Debtor', on account of 'Financial Crisis/Distress', to tied over the situation, is a clear cut case of a 'Financial Debt', as per Section 5(8) of the 'Code', as such, the 'contra plea', taken on behalf of the 'Appellant', is negated, by this 'Tribunal'.

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92. As far as the present case is concerned, considering the fact that the 'Corporate Debtor's Audited Balance Sheet', in respect of the Year Tending 31.03.2021, exhibits an 'Unsecured Loan' of Rs. 13,84,72,064/- and even the 'Certificate of the Auditor', dated 08.05.2022, also mentions the 'Unsecured Loan', described in the Balance Sheet of the Corporate Debtor as advanced/given by the '1st Respondent/Financial Creditor', and also this 'Tribunal', bearing in mind, yet another fact that

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*the 1st Respondent/Financial Creditor/Petitioner, on 25.01.2021, had advanced a Sum of Rs. 3,97,85,000/-, to the 'Corporate Debtor', for the purpose of satisfying 'One Time Settlement Offer', given to the Corporate Debtor', by the 'State Bank of India', and the said amount was disbursed through Banking Transactions, all these would go to establish in a crystalline manner that there is a 'Financial Debt' of 'more than Rs. 1 Crore', 'Due and Payable', by the 'Corporate Debtor', to and in favour of the '1 Respondent/Financial Creditor/Petitioner*

*93. In the light of foregoing detailed discussions, this 'Tribunal', taking note of the contentions, advanced on respective sides, considering the surrounding facts and circumstances of the instant case, in a holistic manner, comes to an 'irresistible' and 'inescapable' conclusion that the 'aspect of 'Debt and Default', committed by the "Corporate Debtor', were established by the 1 Respondent/Financial Creditor/Petitioner, to the subjective satisfaction of this "Tribunal"*

13.2. In the present case the Audited Certificate as it appears from the **Annexure P/2** of the petition shows an outstanding, repayable by the Respondent Company to the Petitioner, which is itself sufficient to prove the "Loan" that is alive and repayable. There is nothing on record to show discharge of the liability to repay by the Corporate Debtor.

14. On the contention **whether a formal Written Agreement is required to prove loan:**

14.1. We would note that absence of a formal Written Agreement in respect of a loan is inconsequential, when there is clear and unambiguous acknowledgment recorded in the balance sheets for the Financial Years 2021-22 and 2022-23 about the existence of Loan which has been duly ratified by the present management too.



14.2. Thus the liability to repay is emphatically acknowledged in the balance sheet.

**14.3. Judicial precedents:**

14.3.1. **In Satish Balan Versus Neeta Navin Nagda and Anr. 2023 SCC OnLine NCLAT 1999**, Hon'ble NCLAT has observed as under:

*“a 'Financial Creditor' may file an application under Section 7 for initiating CIRP against the 'Corporate Debtor' when the default has occurred. It is for the 'Financial Creditor' to file an application along with the proof of default. If there is a financial debt, which is more than the prescribed amount of Rs. 1 Crore and there is a default and if the application is complete, the application is required to be admitted by the 'Adjudicating Authority'. It is for the 'Adjudicating Authority' to look into the various documents, records and evidence of default as furnished in part V of Form 1 of the application filed under Section 7 of the Code.*

The Hon'ble 'Appellate Tribunal' observe that *“the Code nowhere prescribes that there should be a written agreement between the parties to prove the loan and its disbursement to be treated as financial debts. It is also observed that if there are acknowledgments by the 'Corporate Debtor' and where the statements of accounts of the 'Corporate Debtor' are in position to proof disbursement of loan and payment of interest, the absence of formal written agreement would not bar the 'Financial Creditor' (the Respondent No. 1 herein) from initiating the CIRP.”*

**(Emphasis added)**

14.4. Similarly in **Mrs. Jayanthi G. Ravi** (Supra) the Hon'ble NCLAT indicated that mention in the balance sheet about existence of liability outstanding and non payment of dues *“clinchingly establishes*



that the respondent company had admitted its liability to repay” where lender was the executive director of the borrower company.

14.5. In the light of the above, we conclude that the acknowledgment of liability being evident, no formal written agreement between the parties is necessary to prove the loan and its disbursement.

15. **To ascertain whether the Respondent is in good financial health and ratio of Vidarbha would apply, we would note that:**

15.1. The Respondents have miserably failed to demonstrate proof of its solvency from the balance sheets.

15.2. There is no effort or request on the part of the Corporate Debtor for any settlement.

15.3. Moreover, the said decision **Vidarbha** (supra) clearly indicates that in the case of a financial debt, there is a little more flexibility for the Adjudicating Authority, that the Adjudicating Authority has been conferred the discretion to admit the application of the Financial Creditor or if the facts and circumstances so warrant, keep the admission in abeyance or even reject the application.

15.4. Whereas, in **Suresh Kumar Reddy (Supra)**, the Hon’ble Apex Court has clearly observed that

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

XX XX XX XX

18. Even assuming that NCLT has the power to reject the application under Section 7 if there were good reasons to do so, in the facts of the case, the conduct of the Appellant is such

*that no such good reason existed on the basis of which NCLT could have denied admission of the application under Section 7.”*

Therefore, the ratio of “**Vidarbha**” (supra) judgment cannot be applied blindly and will not apply here.

**16. On the authorities cited by the Respondents:**

**16.1. M/s. SS Engineers Vs. Hindusthan Petroleum Corporation Limited & Ors., Civil Appeal No. 4483 of 2022 (supra), Hon’ble Court has held** that “*NCLT exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum and it is not the object of the IBC that should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.*”

It thus deals with Operational debt and not financial debt hence the ratio lends no assistance to the respondent’s defence.

**16.2. K.D. Sharma** (Supra) deals with disclosures of all material facts which would equally apply to the Respondents.

**16.3. Prestige Lights Ltd. Vs. State Bank of India, reported in (2007) 8 SCC 449,** deals with suppression of material fact but the Corporate Debtor has failed to prove that there is suppression of material fact by the Financial Creditor.

**16.4. Radha Exports** (Supra) propounds discharge of onus to prove legally recoverable debt, but it was neither referred to in course of arguments nor its relevance discussed.

**16.5. Narendram Promtoers & Fincon Private Limited Vs. Vinline Engineering Private Limited, in CP (IB) No. 749/KB/2020,** NCLT, Kolkata Bench held that financial debt needs to satisfy the following essential conditions:

*“8 (i) Disbursement of loan must be there;*

*8(ii) Disbursement has been made for a consideration for time value of money; and*

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*8 (iii) The debt, wholly or partly, has become due and payable and is not paid by the Corporate Debtor means committed default;*

In the present case disbursement of loan and failure to repay is acknowledged in the balance sheet. Thus admittedly and irrefutably “debt” which has become “due and repayable” has been proved to the hilt.

16.6. The applicability of the ratio of the **Dakalia Brothers (Supra)**, could not be comprehended as in the said case the Court was attempting to recognise the true nature of transaction between the parties.

16.7. **Global Credit Capital (Supra)** may render some assistance where the true nature of transaction is required to be unearthed to ascertain whether the debt is a financial debt or an operational debt, which is not the case here.

16.8. **Techma Engineering Enterprise Private Limited Vs. Millenium Forge & Engineers Pvt. Ltd., Company Petition (IB) No. 134/KB/2023** was rendered by Kolkata Bench of NCLT where having considered the decisions in **Desana Impex Limited and Global Credit Capital Limited**; held that issuance of TDS certificate does not amount to acknowledgment of liability by the Corporate Debtor and in absence of any document or instrument governing contract, no inference could be drawn that money was advanced as a loan and the same shall qualify as a financial debt under Section 5 (8) of IBC. It was a case where no proof of grant of loan or acknowledgment of liability was available. Hence, the claim of the Financial Creditor solely on the basis of deductions of TDS was not found sustainable. Hence the said decision is of no relevance.

16.8.1. In the present case, acknowledgment of liability in the balance sheet would itself constitute “acknowledgment of liability” in true sense of the term.





16.8.2. We would note that in the present case, no such dispute exists and therefore, the said decision is of no relevance.

**Our inference:**

17. We are of the considered opinion that the Respondents cannot shy away from the acknowledgments in the balance sheet of its liability to repay the Financial Creditor.

18. In view of the fact that application is not barred by limitation, there is clear acknowledgment of debt in the balance sheet of the Corporate Debtor of 'debt' and 'default', the threshold having met and in absence of any settlement proposal from the Corporate Debtor, we feel that the application deserves to be admitted.

19. Further, we are fortified in our views by the following decisions of the Hon'ble Apex Court which succinctly clarifies what a "Financial Debt" would be that would justify initiation of Corporate Insolvency Resolution process:

19.1. In **Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416**, it was held that:

*"any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money."*

**(Emphasis added)**

19.2. **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401**, that:

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*“the essential condition of financial debt is disbursement against the consideration for time value of money.”*

**(Emphasis added)**

19.3. **Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14)** that:

*“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...'”*

**(Emphasis added)**

19.4. In the present case, “disbursement” of sum as loan which is essentially against “consideration for time value of money” is adequately met. Thus “debt” that is due to “Financial Creditor” and “default” by the Corporate Debtor is satisfied.

20. In terms of the foregoing discussions, we **ALLOW** the application bearing **Company Petition (IB) No. 69/KB/2024** filed under Section 7 of the I&B Code, and accordingly, we order the initiation of Corporate Insolvency Resolution Process (CIR Process) in respect of the Corporate Debtor and pass the following Orders:

**(a)** This application being **C.P.(IB)/69(KB)2024** filed by **Sanjay Kumar Bhuwalka**, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **SULOJAY REALTY PRIVATE LIMITED**, the Corporate Debtor, is **admitted**.

**(b)** There shall be a moratorium and the moratorium shall have effect under Section 14 of the IBC from the date of this order till the completion of the CIRP or until this Adjudicating Authority

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approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC.

- (c) Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (d) **Mr. Manish Agarwal, having** registration number **IBBI/IPA-001/IP-P01995/2020-2021/13087** email: [ip1387ma@gmail.com](mailto:ip1387ma@gmail.com), is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- (e) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- (f) The IRP/RP shall submit to this Adjudicating Authority periodical report about the progress of the CIRP in respect of the Corporate Debtor.
- (g) The Financial Creditor shall deposit a sum of **Rs. 3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses

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arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

**(h)** In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

**(i)** Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this Order.

- 21. C.P.(IB)/69(KB)2024** to come up on **17.01.2025** for filing the progress report.
- 22.** The Registry is directed to send e-mail copies of the Order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 23.** Urgent certified copies of this Order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee,**  
**Member (Judicial)**

Signed on this, the 13<sup>th</sup> day of December, 2024

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M. Jana (P.S.)