

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **26.03.2026** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/29/CHE/2025
NAME OF THE PETITIONER(S) : Malco Gems
NAME OF THE RESPONDENTS : Prince Foundations Ltd
UNDER SECTION : Sec 7 Rule 4 of IBC, 2016

ORDER

Present: None for the Petitioner.

Ld. Counsel Shri. Vijay Vigneshwar for the Respondent.

Vide separate order pronounced in Open Court, petition is admitted and CIRP is initiated against the Corporate Debtor Prince Foundations Limited. Shri. G.S. Sudhir is appointed as the IRP.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Date: 26.03.2026

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/29(CHE)/2025

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 under r/w Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of
M/s. Prince Foundations Private Limited

MALCO GEMS,
Represented by its Sole Proprietor
Mr. Jitendra Singh Rathour,
Sunket Associates Off – 402, Kane Plaza,
Near Kamp Plaza Dumping Ground,
Malad West, Off LK Road,
Mumbai – 400 064

... Petitioner/Financial Creditor

Versus

PRINCE FOUNDATIONS LIMITED,
New No.61, Old No.17, Ormes Road,
Kilpauk, Chennai – 600 010

... Respondent/Corporate Debtor

Present:

<i>For Petitioner</i>	:	<i>Shri. J. Manivannan, Advocate</i>
<i>For Respondent</i>	:	<i>Shri. K.K. Vijay Vigneshwar, Advocate</i>

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

ORDER

(Heard through Hybrid Mode)

This petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 under r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) by **MALCO GEMS**, Represented by its Sole Proprietor Mr. Jitendra Singh Rathour, (hereinafter referred to as “**Petitioner/Financial Creditor**”) against **PRINCE FOUNDATIONS LIMITED** (hereinafter referred to as “**Respondent/Corporate Debtor**”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”).

2. **Part-I** of the petition sets out the details of the Petitioner i.e. Malco Gems. It has its Registered Office at Sunket Associates Off – 402, Kane Plaza, Near Kamp Plaza, Dumping Ground, Malad West, Off: LK Road, Mumbai-400 064. **Part-II** of the petition sets out the particulars of the Corporate Debtor i.e. Prince Foundations Limited. It was incorporated on 27.02.2004 with Authorised Capital of Rs.45,00,00,000/- and Paid Up Share Capital of Rs.38,82,00,000/-. Its Registered Office is situated at New No. 61, Old No. 17, Ormes Road, Kilpauk, Chennai-600 010 within the jurisdiction of

this Tribunal. In **Part-III** of the petition, the Petitioner has proposed the name of Mr. Sudhir GS, having Registration No. IBBI/IPA-001/IP-P-02744/2022-2023/14183 as the Interim Resolution Professional.

3. **Part-IV** of the petition provides the particulars of the financial debt being Rs.29,32,14,975/- (Rupees Twenty Nine Crores Thirty Two Lakhs Fourteen Thousand Nine Hundred and Seventy Five only). The amount in default is stated as Rs.29,32,14,975/-and date of default is stated as 14.08.2022.

4. **Part-V** of the petition provides the list of documents attached with the petition to prove the existence of financial debt and amount in default.

5. As per the averments made in the petition, in 2020 the Corporate Debtor/Respondent approached the Petitioner for seeking financial assistance for the business requirements. On its request, Petitioner disbursed monies to the Respondent/Corporate Debtor from time to time through regular banking channels. Between 14.09.2020 to 18.08.2021, the Petitioner disbursed an aggregate sum of Rs. 16,90,50,000/- to the Corporate Debtor which disbursements are reflected in the bank statements and the ledger accounts. The Corporate Debtor on 31.03.2022, also executed a Demand Promissory Note in favour of the Petitioner unequivocally acknowledging the outstanding

liability of Rs. 16,90,50,000/- and agreeing to repay the same on demand, together with interest @ 18% per annum. Despite follow-up, the Corporate Debtor did not repay the outstanding amount which made the Petitioner issue a demand notice dated 30.07.2022 granting ten days time to the Respondent to make the repayment. The notice was served on the Corporate Debtor on 03.08.2022. The Corporate Debtor neither replied to the notice nor made any repayment within the stipulated period.

6. It is stated that the amount was disbursed against consideration for time value of money and it comes within the definition of Section 5(8) of IBC, 2016 i.e. financial debt. There was disbursement of money through the banking channels which was acknowledged by the Respondent through a Demand Promissory Note. The agreed interest payable by the Respondent is 18% per annum which evidences the time value of money. It is stated that the default is continuous and subsisting as on date of filing of the petition. It is stated that the earlier petition filed by the Petitioner was withdrawn before admission without issuance of notice and adjudication on merits and as such present petition is maintainable. The withdrawal was purely to cure the defects and was bonafide. It is stated that the Petitioner being proprietary firm can maintain the petition under Section 7 of IBC, 2016 as held in the case

of Fipola Retail (India) Pvt. Ltd. v. M2N Interiors in Company Appeal (AT) (Ch) (Ins) No. 89 of 2021.

7. On getting notice of the petition, the Respondent filed the reply alleging that prior to filing of this petition, the Petitioner had filed a petition under Section 7 of IBC, 2016 (CP(IB)26(CHE)2023 on 31.10.2022. It was listed before the Tribunal on 16.02.2023 and 17.02.2023 where the Tribunal asked the Petitioner to show the proof of disbursement of debt including TDS Certificate or confirmation of balances but no such documents were available with the Petitioner. On its request, matter was adjourned to 03.03.2023 on which date, the Petitioner withdrew the petition and the Tribunal dismissed the petition as withdrawn. It is stated that no liberty was sought or given by the Tribunal to file the petition afresh or reopen the petition. It is stated that Order 23 Rule 1(3) of C.P.C. provides that if an applicant files for withdrawal of a suit, the court shall, upon being satisfied that there are sufficient grounds for allowing the applicant to institute a fresh suit with respect to the same cause of action, the court may grant liberty to the applicant. In the present case, no such liberty was taken or granted. Order 23 Rule 1(4)(b) of C.P.C. provides that when the applicant withdraws from a suit without the permission of the court and without liberty to institute a fresh suit, he shall be liable for such cost as

the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Reference is made of the case *Florex Tiles V Greenstone Granite Private Limited Company Appeal (AT) (Ins) No. 1487 & 1488 of 2024 dated 13.08.2024*. Reference is also made of the case *V. Rajendran and Anr. Vs. Annasamy Pandian (Dead) through legal representatives Karthyayani Natchiar – (2017) 5 SCC 63*.

8. It is stated that this petition has been filed by the sole proprietary concern which is not recognized as a legal entity. Section 5(7) defines the financial creditor. It means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred. It is stated that the sole proprietary concern does not fall under the definition of person under Section 3(23) of IBC, 2016. Reference is made of the case *Octopus Marine Vs. VME Infrastructure Pvt. Ltd. IBA/717/2019 dated 06.01.2020*.

9. It is stated that the Petitioner has alleged the date of default as 14.08.2022 which is subsequent to the date of demand notice dated 30.07.2022 issued by the Petitioner under Rule 5 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016. Under IBC, there is no requirement to issue a demand notice by a Financial Creditor, however, the

Petitioner in order to create confusion, issued the demand notice as provided under Section 8 of IBC, 2016 which is applicable for an operational debt.

10. It is stated that the Corporate Debtor had identified a property in Pursaiwalkam and entered into an agreement with K.V. Finance and Investment for joint development of the property vide agreement dated 19.08.2016 (Annexure-2). Since there was a delay in starting the project, the partners of K.V. Finance and Investments requested that they be allowed to bring in a sister concern who will step in the shoes of K.V. Finance & Investments and the funds received from the Petitioner by the Respondent shall be paid to K.V. Finance & Investments upon receipt of payments. The Respondent has placed the copy of bank statements evincing payment to K.V. Finance & Investments immediately upon receipt of payment from the Petitioner as Annexure-3. It is stated that the Petitioner is not the Financial Creditor as the transactions were towards the Joint Development of a real estate project. The Petitioner has not placed any proof showing the transaction in the nature of financial debt. It is stated that the demand promissory note issued by the Respondent in favour of the Petitioner does not constitute a financial debt. It was issued as the proof of investment in the real estate project. It is stated that the promissory note was issued on 31.03.2022,

almost after six months from the last date of disbursement of investment by the Petitioner.

11. **The Petitioner filed the rejoinder** wherein it denied the averments made in the reply and reiterated what was stated in the petition. It is stated that in the earlier petition filed vide CP/26/2023 under Section 7 of IBC, the Tribunal during the hearing on 17.02.2023 observed that the Financial Creditor has not attached any documents showing the disbursement of amounts to the Corporate Debtor nor there is any loan agreement attached, there are no charge registration uploaded on the MCA website, no TDS certificate is attached to show that interest has been paid by the Corporate Debtor on the loans, no confirmation or Balance Sheet of the Corporate Debtor nor any record with Information Utility has been annexed to the petition. Since the counsel appearing for the Financial Creditor was unable to comply with the order dated 17.02.2023 and was not in a position to produce the documents at that point in time, he sought for the withdrawal of the petition. It is stated that the Petition was withdrawn even before the notice and no adjudication was taken on merits and as such no prejudice is caused to the Corporate Debtor. The Petitioner has filed the petition in the prescribed Form-1 under Rule 4 r/w Section 7 of IBC and submitted all the requisite documents thus the

present petition is complete in all aspects and it is liable to be admitted in accordance with the law laid down by the Hon'ble Supreme Court in *Innovative Industries Ltd. v. ICICI Bank Ltd. (2018) 1 SCC 407*. As regards objection that the Petitioner did not seek any liberty at the time of withdrawal to file fresh Section 7 petition, the Petitioner referred Section 424 of the Companies Act, 2013 and stated that Section 12 and Order 23 Rule 1 of C.P.C. is applicable only to the proceedings to which C.P.C. applies. Section 424(1) of the Companies Act specifically states that the Tribunal while disposing of any petition under IBC, shall not be bound by the procedures laid down under C.P.C. As per Section 424(2), the Tribunal has for the purposes of discharging its function under this act under the IBC, same powers as are vested in a Civil Court under CPC. The procedure for withdrawal of petition filed under Section 7, 9 & 10 is governed by Rule 8 of IBC Rules, 2016 which the Tribunal is bound to consider and it cannot take recourse to a process stipulated under C.P.C. which deals with adjudication of suits. Rule 8 does not stipulate any condition for withdrawal of the petition filed under Section 7, 9 & 10 of IBC nor imposes any bar on the filing of a fresh petition. It is stated that the case of *Florex Tiles* supra is distinguishable on facts. In the case supra, on the petition filed under Section 9 of IBC, notice was issued. The Corporate Debtor

entered the appearance and alleged that the Operational Creditor has given false evidence in respect of the demand notice. Thereafter, Operational Creditor withdrew the petition with liberty to file afresh which the Tribunal did not grant, however, allowed the withdrawal with cost. In the present case, no notice was issued to the Corporate Debtor and no prejudice has been caused to the Corporate Debtor. In the judgment, applicability of Rule 8 was not discussed which is a special law and will prevail over the procedure contemplated under Order 23 CPC which is a general law. It was held in the case of *Rourkela Syndicate vs. Metistech Fabricators Pvt. Ltd. in Company Appeal (AT)(Ins) No.924 of 2022* that a petition filed under Section 7 or 9 of IBC cannot be said to be a suit. Reference is made of the case *HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad, 2024 SCC OnLine SC 3190* where it was held that it must be kept in mind while extending the principles to a legal proceedings other than suits that the principles are not applied in a rigid or hyper-technical manner. It is stated that the proceedings under IBC are the special proceedings governed by a self-contained code and the CPC does not govern the IBC proceedings. It is stated that withdrawal of the petition simpliciter before admission does not require leave/permission.

12. It is stated that the petition filed by a proprietary concern is maintainable as held by Hon'ble NCLAT in *Fipola Retail (India) Private Limited* supra.

13. As regards inconsistency in the dates of default, it is stated that based on the request of the Corporate Debtor, the Financial Creditor from 14.09.2020 to 18.08.2021, disbursed the sum as Unsecured Loan to the Corporate Debtor. Thereafter, the Corporate Debtor on 31.03.2022, executed the Promissory Note making recitals to repay the amount on demand with interest. The Petitioner sent the demand notice on 30.07.2022 but despite receipt, the Corporate Debtor neither replied to the notice nor made the payment within ten days time given by the Petitioner. It is stated that the financial debt can be proved from the documents and it is not mandatory that the written financial contract must exist to prove the financial debt. It is stated that the disbursement was made against the time value of money and disbursement qualifies as a financial debt as held in the case of *Orator Marketing Pvt. Ltd. v. Samtex Dexinz Pvt. Ltd., 2021 SCC OnLine SC 513*. It is stated that there is no part payment, no settlement and no novation of contract.

14. As regards averment that the Corporate Debtor and K.V. Finance & Investments had entered into a Joint Development Agreement of a project and since there was a delay, the partners of K.V. Finance & Investments requested to bring in their sister concern to step into the shoes of K.V. Finance & Investments and the funds received from the Petitioner would be paid to K.V. Finance & Investments, it is stated that the Corporate Debtor in order to escape from its liabilities orchestrated a concocted story without any supporting documents. It is stated that there was no privity of contract between the Financial Creditor and K.V. Finance & Investments. It is stated that the payment made by the Petitioner to the Corporate Debtor, was used by the Corporate Debtor to make payment to K.V. Finance & Investments and as such the Corporate Debtor cannot escape from its liabilities. The Petitioner has established the existence of financial debt, occurrence of default and non-payment despite demand and thus satisfied the twin test under Section 7(5) of IBC, 2016.

15. The Petitioner also filed the NeSL Certificate (Form-D) vide S.R. No.1231 date 27.03.2025 which records the amount in default as Rs.29,32,14,975/- and date of default as 14.08.2022. The authentication was

completed on 10.02.2025. It also mentions the date of last acknowledgement of debt as 31.03.2022.

16. The Petitioner has filed a memo vide S.R. No. 4782 dated 12.11.2025 in terms of the order dated 22.08.2025 whereby parties were directed to file Balance Sheet/Income-Tax Returns reflecting the transactions submitted with the RoC and the Income Tax Department for the period FY 2020-21 to 2022-23 duly certified by the Statutory Auditor. It is stated that the amount advanced to the Corporate Debtor has been consistently classified as loans in the Income Tax Returns. The Respondent filed a memo vide S.R. No. 3970 dated 19.09.2025 enclosing the Chartered Accountant Certificate dated 17.09.2025 confirming that the monies received from Malco Gems were classified as project investments annexing the documents including tally records, audited financials for FY 2020-21, unaudited financials for FY 2021-22 and ledger balance from April, 2020 to September, 2025 as Annexure-2. The Respondent also filed a memo vide S.R. No. 5159 dated 01.12.2025 and the audited financial statement for the FY 2021-22 as Annexure-2.

17. We have heard Ld. Counsels for the parties.

18. Ld. Counsel for the Petitioner argued on the lines of the petition. He contended that the Corporate Debtor had availed the financial assistance from the Petitioner for its business requirements in 2020. The Petitioner disbursed the monies to the Corporate Debtor through regular banking channels during the period from 14.09.2020 to 18.08.2021 amounting to Rs.16,90,50,000/- which is evidenced by bank statements and ledger accounts. On 31.03.2022, the Corporate Debtor executed a demand Promissory Note in favour of the Petitioner unequivocally acknowledged the outstanding liability and agreed to repay the same on demand together with interest @ 18% per annum. Ld. Counsel contended that despite demands and demand notice dated 30.07.2022, the Corporate Debtor neither responded to the legal notice nor made the payments.

19. Ld. Counsel submits that there is no prescribed statutory format for issuance of demand/recall notice in respect of financial debt under IBC. For convenience, it adopted the format generally used for demand notices and the same cannot be construed as improper nor it converts the debt into an operational debt. Ld. Counsel referred Section 5(8) of IBC, 2016 and the case of *Innoventive Industries Ltd. v. ICICI Bank Ltd. (2018) 1 SCC 407* and *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., (2021) SCC OnLine SC 513* to

submit that once a debt is shown to be a financial debt and default is admitted, the adjudicating authority has to admit the petition. Even the loans advanced without interest would constitute financial debt if disbursed against time value of money.

20. Ld. Counsel submits that the demand notice was issued on 30.07.2022 granting ten days time for repayment. It was served on the Corporate Debtor on 03.08.2022. The default is continuing and subsisting.

21. Ld. Counsel further submits that the earlier petition CP/26/2023 was withdrawn before admission and issuance of notice and without adjudication on merits. Rule 8 of IBBI Rules, 2016 governs withdrawal before admission and does not require liberty to re-file nor does it impose any statutory bar. CPC does not govern the proceedings under IBC. Section 424 of the Companies Act, 2013 provides that the tribunal is not bound by CPC. Section 7 petition is not a suit and Order 23 Rule 1 is not applicable. He distinguished the case of *Florex Tiles* supra stating that Rule 8 of IBC cannot be overridden. Withdrawal was purely to cure the *defects and was bonafide*. Hon'ble Supreme Court in *HPCL Biofuels Ltd.* has held that where procedural principles are sought to be borrowed outside their strict statutory context, the bonafides of the party and the factual matrix leading to withdrawal must be

examined, and a mechanical or technical application is impermissible.

Ld. Counsel submits that the Petitioner is a proprietary concern and can maintain the petition under Section 7 of IBC in view of the judgment in the case of *Fipola Retails* supra.

22. Ld. Counsel submits that Demand Promissory Note was executed in acknowledgment of pre-existing debt and under Section 2(b) of The Indian Contract Act past consideration is a valid consideration.

23. Ld. Counsel submits that end use of the funds does not determine the character of a transaction. There is no equity participation, profit sharing or its assumption by the Petitioner. There was no privity of contract between the Petitioner and any such party. The borrower cannot in law convert a loan into an investment merely by the manner in which the borrowed funds are deployed. The Balance Sheets placed by the Petitioner consistently reflect the amounts advanced to the Corporate Debtor as loans. The audited financial statements for FY 2021-22 have been prepared by the Corporate Debtor on 15.10.2025 do not contain any Auditors' Report and they are not supported by UDIN. The Corporate Debtor had not submitted the Annual Returns with the RoC for FY 2020-21. In the absence of auditors certification, the accounting

classification or reclassification claimed by the Corporate Debtor is wholly unreliable.

24. Ld. Counsel for the Respondent/Corporate Debtor argued on the lines of the reply. He submitted that the Petitioner has given inconsistent date of default. The transactions predate the demand promissory note. The Corporate Debtor had entered into a Joint Development Agreement in respect of a property with K.V. Finance and Investments on 19.08.2016. Due to delay in commencement of the project, K.V. Finance and Investments requested that the investment be routed through the Petitioner with an understanding that the Corporate Debtor would immediately remit the sums which is evident from the bank statements. Ld. Counsel submits that the transaction was in the nature of investment and not a loan carrying the time value of money. The Corporate Debtor has submitted the financials which record the transaction as 'project advance'. Ld. Counsel submits that the Petitioner did not possess sufficient funds to advance loan to the Corporate Debtor. The absence of statutory audit does not render the debt as financial debt.

25. We have given our thoughtful consideration to the rival contentions and perused the documents.

26. It is seen from the record that the Petitioner had earlier filed the petition CP/26/2023 under Section 7 of IBC, 2016. It came up for hearing on 17.02.2023 where the Tribunal observed that the petitioner has not placed the documents showing the disbursement of the amount to the Corporate Debtor, no loan agreement has been annexed, no charge registration has been uploaded on the MCA website and no TDS certificate has been attached to show that the Corporate Debtor has paid the interest on various loans. There is no confirmation or balance sheet of the Corporate Debtor or any record with Information Utility annexed with the petition. The Tribunal granted the Petitioner an opportunity to rectify the defects within a period of seven days and listed the petition for hearing on 03.03.2023 on which date, the counsel sought for withdrawal of the petition. On his submission, the petition was dismissed as withdrawn.

27. The record shows that the defects were raised even prior to giving notice of the petition to the Respondent/Corporate Debtor. There was no adjudication of the petition on merits. The Petitioner after curing the defects as pointed above, filed the fresh petition CP(IB)/29(CHE)/2025. It is not the case that the Petitioner concealed about the withdrawal of the petition CP/26/2023. It is true that the counsel appearing for the Petitioner at the time

of withdrawal of the petition, did not seek liberty to file the petition afresh after curing of the defects and Order 23 Rule 1(4) of C.P.C. provides that if the petitioner withdraws a suit or part of claim without the permission as provided under Order 22 Rule 1(3), he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim but Rule 1(3) also provides that where the court is satisfied that a suit must fail by reason of some formal defect or there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may on such terms as it thinks fit, grant the plaintiff permission to withdraw with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

28. Section 424 of the Companies Act, 2013 provides the procedure before the Tribunal. It provides that the tribunal shall not while disposing of any proceeding before it be bound by the procedure laid down in the CPC but shall be guided by the Principles of Natural Justice and subject to the other provisions of this Act or IBC Code or any rules made thereunder and shall have power to regulate its own procedure for the purposes of discharging its functions under the Act.....

29. Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 provides that the adjudicating authority may permit withdrawal of the application made under Rule 4, 6 or 7 as the case may be, on a request made by the Applicant before its admission. Since there is a specific provision in the Rule, the Respondent cannot seek the shelter of a process stipulated under CPC which deals with adjudication of suits. Rule 8 does not stipulate any condition for withdrawal of the application filed under Section 7, 9 and 10 of IBC. It only states that the withdrawal is permitted at any time before its admission without imposing any bar on the filing of a fresh application thus permits withdrawal simpliciter without any embargo on re-filing. In the case of *Florex Tiles* supra, notice was issued to the Corporate Debtor and the Corporate Debtor entered appearance and filed an application alleging that the Operational Creditor has given false evidence in respect of demand notice. It was thereafter the Operational Creditor sought the withdrawal with liberty to file afresh which the tribunal did not grant and allowed the withdrawal simpliciter with cost. In appeal, Hon'ble NCLAT upheld the order. It discussed about the objection raised by the Corporate Debtor and the IA making the allegations and thereafter dismissed the appeal. In the present case, there was no notice issued to the Corporate Debtor. It was

observed by the tribunal that the Financial Creditor has not attached the documents in support of the application. As such withdrawal simpliciter by the Petitioner would not preclude the right of the Petitioner/Financial Creditor to file fresh petition against the Corporate Debtor. As according to the Petitioner, the dues subsist till date and the Corporate Debtor is in continuous default. The maxim of "*Generalis Specialties Non Derogant*" applies in the present case which states that general laws do not prevail on special laws. Hon'ble NCLAT in the case of *Rourkela Steel Syndicate vs. Metistech Fabricators Pvt. Ltd. in Company Appeal (AT) (Ins) No. 924 of 2022* has held that an application filed under Section 7 or 9 of IBC, 2016 cannot be said to be a 'suit'. Hon'ble Supreme Court in *HPCL Bio-Fuels Ltd.* supra, has held as under:

53. *"The principles of Order 23 Rule are extended to proceedings other than suits with a view to bring in certainty, expediency and efficiency in legal proceedings. However, at the same time, it must also be kept in mind while extending the principles to legal proceedings other than suits that the principles are not applied in a rigid or hyper-technical manner. While the nature of the proceedings, that is, whether such proceeding is a suit or otherwise, should not be a consideration in deciding whether the principles of Order 23 Rule 1 should be extended to such proceedings or not, the bonafide conduct of a party in the unique facts of a case must be considered before precluding such a party from moving ahead with the proceedings."*

30. We are in agreement with the submission of the Petitioner that the proceedings under IBC are the special proceedings governed by a self-contained code and the strict provisions of CPC do not apply unless expressly adopted. Therefore, Order 23 Rule 1(4) has no applications and fresh petition is maintainable.

31. As regards contention that the Petitioner is a proprietary concern and cannot maintain the petition under Section 7 of IBC, Hon'ble NCLAT in the case of *Fipola Retails* supra has clearly held that the petition can even be maintained by a proprietary concern/partnership firm in view of Section 2 of IBC.

32. As regards inconsistency in the date of default, it is seen that the transactions had taken place during the period from 14.09.2020 to 18.08.2021 and a sum of Rs.16,90,50,000/- was disbursed. It is true that there was no loan agreement between the Petitioner and the Corporate Debtor when the amount was disbursed but subsequently the Corporate Debtor executed a Demand Promissory Note on 31.03.2022 in favour of the Petitioner for the said sum promising to pay to the Petitioner on demand a sum of Rs.16,90,50,000/- together with interest @ 18% per annum. The Petitioner has placed the extract of data from the Income Tax Returns certified by the auditor for

FY 2020-21 to 2022-23 where the said amount has been shown as 'loans'. The Petitioner has also filed NeSL Certificate (Form-D) i.e. record of default where the default amount is stated as Rs.29,32,14,975/- with date of default as 14.08.2022. The debt information has been recorded as Unsecured Loan carrying rate of interest @ 18% per annum.

33. As regards documents filed by the Respondent, a perusal would show that the Respondent has filed a certificate issued by the Chartered Account on 17.09.2025 confirming the monies received from Malco Gems. In that certificate, he classified the amounts as 'project investments' and annexed the documents as mentioned above. No document has been placed by the Respondent that the amount disbursed by the Petitioner was the project investments at the behest of K.V. Finance and Investments. Annexure-7 of the memo filed vide S.R. No. 3970 dated 19.09.2025 at page 14 though mentions about the project advances but it does not say the 'project investments'. Further, it does not bear the date of preparation of the document. There is no letter or document from K.V. Finance and Investments about such an arrangement as alleged in the reply. The Respondent has failed to explain under what circumstances the promissory note was issued or what made it issue the promissory note. The Petitioner has pleaded that it did not

have any privity of contract with K.V. Finance and Investments. It has categorically denied having made investment in the project.

34. The promissory note which was issued after the disbursal was made, clearly supports the case of the Petitioner that it was a financial debt and the loan was given for a time value of money. The Petitioner has submitted that the promissory note was executed in acknowledgment of pre-existing debt and as per Section 2(d) of the Indian Contract Act, past consideration is a valid consideration. We are in agreement with the submission and also the contentions of the Petitioner that the end use of funds does not determine the character of a transaction. The character is defined by an intent at the time of disbursement and the existence of repayment obligations. In the instant case, the Petitioner has placed the audited Balance Sheets for the FY 2020-21 to 2022-23 which reflect the amounts advanced to the Corporate Debtor as 'loans' which bear the UDIN. The record shows that the audited financial statements for FY 2021-22 were prepared by the Corporate Debtor on 15.10.2025 which even does not contain the Auditors' Report nor supported by UDIN. The Corporate Debtor did not file its annual accounts with the RoC for FY 2020-21 onwards and as such no reliance can be placed on the unverified and non-statutory financial statements.

35. In the present case, the debt as claimed in the petition, is Rs.29,32,14,975/- as on 30.12.2024. The demand notice was served upon the Petitioner on 30.07.2022. The date of default as recorded in NeSL Certificate is 14.08.2022 i.e. ten days after the date of service of the demand notice on the Corporate Debtor. Thus the date of default cannot be inconsistent as alleged by the Corporate Debtor. This petition has been filed on 01.02.2025 and hence it is within limitation of three years.

36. This Tribunal considered legal framework under Section 7 of IBC which requires establishment of a financial debt and a default by the Corporate Debtor. Hon'ble Supreme Court in *Innoventive Industries Limited Vs. ICICI Bank and Anr. (2017) ibclaw.in 02 SC*, has held that Tribunal is required to see whether there is a debt which is due and payable under the law and whether the default is more than Rs.1.0 Crore. The moment the default amount exceeds Rs.1.0 Crore, the Tribunal is required to initiate a Corporate Insolvency Resolution Process as against the Corporate Debtor. The view taken in the case of *Innoventive industries* has been reiterated by Hon'ble Supreme Court in the case of *ES Krishnamurthy & Ors. Vs. M/s Bharath Hi Tech Builders Pvt. Ltd. (2021) ibclaw.in 173 SC*.

The Hon'ble Supreme Court in the case of *M. Suresh Kumar Reddy vs Canara Bank* 2023 8 SCC 387 in para 11 has held as follows:

11. *Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:*

"3. Definitions. In this Code, unless the context otherwise requires- (12) "default" means non-payment of debt where whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;" Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debt. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it is not due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.

37. In the facts and circumstances of the case, we are of the view that the Petitioner has established its case that it is a Financial Creditor and had advanced the loan being a financial debt which is more than the threshold limit of Rs.1.0 Crore which the Corporate Debtor defaulted in repayment. This petition has been filed within limitation.

38. Considering the above, we are of the view that the petition meets the threshold and is within limitation. It is a fit case to initiate CIRP against the Corporate Debtor.

39. In the light of the foregoing discussions, we admit the petition and initiate CIRP against the Corporate Debtor, Prince Foundations Limited.

40. The Financial Creditor has proposed the name of Shri. Sudhir GS having Registration No. IBBI/IPA-001/IP-P-02744/2022-2023/14183 as the Interim Resolution Professional. He has also filed his consent in Form-2. Upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the IRP till 31.12.2026. **We therefore appoint Shri. Sudhir GS having Registration No. IBBI/IPA-001/IP-P-02744/2022-2023/14183 as the Interim Resolution Professional (IRP).** The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of

the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

41. The Financial Creditor is directed to pay a sum of **Rs. 3,00,000/- (Rupees Three Lakhs only)** to the Interim Resolution Professional to meet out the expenses and to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

42. As a consequence of the petition being **admitted** in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

43. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

44. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

45. Based on the above terms, the petition CP(IB)29(CHE)2025 stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also

furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

Suguna