



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**COURT-IV**

**I.A. No. 823 of 2025**

**in**

**Company Petition No. 735 of 2024**

**and**

**Company Petition No. 735 of 2024**

**(Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)**

**In the matter of:**

Samriddhi Mega Structures Limited

**..... Financial Creditor**

**Versus**

Zexus Air Services Pvt. Limited

**..... Corporate Debtor**

**And in the matter of IA/823/ND/2025**

**(Under Section 65 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016)**

Zexus Air Services Pvt Ltd.

**...Applicant**

**Versus**

Samriddhi Mega Structures Ltd.

**... Respondent**

**CORAM:**

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI**

**HON'BLE MEMBER (TECHNICAL)**



**Order Delivered on: 09.10.2025**

**PRESENT:**

**For the Applicant** : Mr. Arun Kumar, Adv.,  
Mr. Abhinav Kumar, Adv.

**For the Respondent** : Mr. Sanjiv Sen, Sr. Adv.,  
Mr. Ashutosh Dubey, Adv.,  
Mr. Prahalad Balaji, Adv.,  
Ms. Anjali Singh, Adv.,  
Mr. Karan Sharma, Adv.,  
Ms. Simran Gupta, Adv.

**ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

**C.P. (IB) NO. 735 OF 2024:**

**(Under Section 7 of the Insolvency and Bankruptcy Code, 2016)**

1. The present Section 7 Application is filed by **Samriddhi Mega Structures Limited (“Applicant”/ “Financial Creditor”)** seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against **Zexus Air Services Pvt Ltd. (“Corporate Debtor”)** for default in repayment of financial debt of **RS 2,63,08,618/-** (Rupees two crore sixty three lakhs eight thousands six hundred eighteen only).
2. The Corporate Debtor i.e., **Zexus Air Services Pvt Ltd.** having CIN: U62200DL2013PTC251028 is incorporated on 22.04.2013 under the provisions of the Companies Act, 1956 having its registered office situated at 8/138, First Floor, Mehram Nagar, Delhi Cantt., New Delhi. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of



Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

**3.** Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-

- a. The Applicant is a public limited company incorporated under the Companies Act, 1956, earlier known as *Dugar Securities Limited* and presently named *Samridhi Mega Structures Limited*. The Applicant is engaged in various businesses, including lending and advancing funds with or without security, and had advanced financial assistance to the Respondent–Corporate Debtor.
- b. It is submitted that Shri Ramesh Dugar, Director of the Applicant, was also a Director (29.09.2017 to 16.02.2019) and CFO of the Corporate Debtor. During this period, the Corporate Debtor was facing acute financial hardship and required urgent funds to meet day-to-day expenses and liabilities. Consequently, Mr. Ravi Shankar Singh and Mr. Jaideep Mirchandani, shareholders of the Corporate Debtor, requested Shri Ramesh Dugar to arrange finances through his contacts and sources, assuring repayment with 18% interest. Pursuant thereto, in March 2018, the Board of the Corporate Debtor resolved and authorised Shri Ramesh Dugar, as CFO, to arrange finances for sustaining business operations, with a commitment to repay the same with agreed interest.
- c. It is submitted that Shri Ramesh Dugar initially attempted to arrange finances from external entities; however, despite his



efforts, no response was forthcoming. Thereafter, upon repeated requests from Mr. Ravi Shankar Singh and Mr. Jaideep Mirchandani, shareholders of the Corporate Debtor, the Applicant– Financial Creditor (*Samridhi Mega Structures Limited*) itself extended financial assistance to the Corporate Debtor. The funds were advanced as unsecured loans through proper banking channels, the details of which are tabulated hereinbelow:

<b>Date of Disbursement</b>	<b>Amount Disbursed (in Rupees)</b>
01.04.2018	4,98,618/-
12.04.2018	23,40,000/-
13.06.2018	56,40,000/-
18.06.2018	50,00,000/-
26.06.2018	40,00,000/-
31.07.2018	30,00,000/-
18.08.2018	35,00,000/-
25.09.2018	42,30,000/-
18.03.2019	21,00,000/-
<b>Total</b>	<b>3,03,08,618/-</b>

d. Accordingly, the Applicant disbursed an aggregate sum of ₹3,03,08,618/- (Rupees Three Crores Three Lakhs Eight Thousand Six Hundred and Eighteen only) to the Corporate Debtor towards financial assistance.



- e. The Financial Creditor disbursed a total sum of ₹3,03,08,618/- (Rupees Three Crores Three Lakhs Eight Thousand Six Hundred and Eighteen only) to the Corporate Debtor between 01.04.2018 and 18.03.2019. Out of the said amount, ₹40,00,000/- (Rupees Forty Lakhs only) has been repaid. Accordingly, an amount of ₹2,63,08,618/- (Rupees Two Crores Sixty-Three Lakhs Eight Thousand Six Hundred and Eighteen only), along with interest at the agreed rate of 18% per annum from the respective dates of disbursement, remains due and outstanding, which the Corporate Debtor has failed to discharge.
- f. The Applicant submitted that one Capt. Samuel Tadg Omer Ahmed, an Operational Creditor, filed a petition under Section 9 of the IBC against Corporate Debtor, registered as CP No. IB 421/ND/2020. That vide order dated 25.03.2022, the application was admitted under Section 9 of the Code, initiating CIRP against the Corporate Debtor and appointing Mr. Aashish Gupta as the Interim Resolution Professional (IRP). Pursuant thereto, a public announcement was made inviting claims, and the Applicant-Financial Creditor, vide email dated 26.03.2022, submitted its claim of ₹2,63,08,618/- along with interest on account of financial debt. However, before the IRP could take further steps, the Corporate Debtor filed an appeal before the Hon'ble NCLAT being Comp. App (AT) (Ins) No. 363 of 2022, wherein a stay was granted on 05.04.2022.



- g. That the Financial Creditor, upon learning that an appeal was pending, filed an application bearing I.A. No. 1338/2022 in the said appeal. Subsequently, the parties to the appeal amicably settled their dues, and the proceedings initiated under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor were dropped. Consequently, the Financial Creditor withdrew its intervention application, which was accordingly dismissed as withdrawn vide order dated 22.03.2023.
- h. However, as per the contention of the Applicant, despite acknowledging the financial debt in its balance sheets year after year, including for the period ending 31.03.2022, where the said liability is reflected as an unsecured loan, the Corporate Debtor failed to discharge its debt obligations towards the Applicant, an unsecured Financial Creditor. It is further submitted that no annual return of the Corporate Debtor has been filed with the Registrar of Companies after the financial year 2021-22.

#### **4. REPLY FILED BY CORPORATE DEBTOR**

- a. The Respondent submitted that the petition filed by the Financial Creditor is replete with misstatements and misleading averments. The Financial Creditor is guilty of *suppressio veri* and *suggestio falsi*, having willfully concealed material facts and made false statements on oath.



- b. It is submitted that the alleged transactions between the Financial Creditor and the Corporate Debtor were sham and do not qualify as “financial debt” within the meaning of the Insolvency and Bankruptcy Code, 2016. The Financial Creditor has failed to produce any loan agreement to substantiate its claim. Moreover, the Financial Creditor is neither a scheduled or registered NBFC, nor a cooperative bank, and is not registered under the Money Lenders Act; hence, it was not legally competent to advance or lend money as alleged.
- c. That as per Section 5(8) of the Insolvency and Bankruptcy Code, 2016, a “financial debt” means a debt, along with interest if any, disbursed against consideration for the time value of money. The essential ingredients of this definition are (i) disbursement of debt, and (ii) consideration for the time value of money. In the present case, the promoters and directors of both the Financial Creditor and the Corporate Debtor are common; hence, the ledger entries alone cannot establish that any actual disbursement was made to the Corporate Debtor. The Financial Creditor has also failed to demonstrate any consideration for the alleged transaction or to produce any written document evidencing a loan. On the contrary, the ledger reflects a mere inflow and outflow of funds indicative of a running account, lacking any commercial effect of borrowing, an essential requirement under Section 5(8)(f) of the Code.



- d. The Respondent submitted that the fundamental ingredients necessary to constitute a valid financial transaction are absent in the present case, as—
- i. The alleged transactions were not supported by any Board Resolution authorizing the borrowing;
  - ii. There is no record indicating that the Corporate Debtor required funds as a loan or that any such borrowing was intended;
  - iii. No loan agreement, stipulation of interest, or document specifying the period or terms of repayment has been produced;
  - iv. Mr. Ramesh Duggar, who served as the Chief Financial Officer of the Corporate Debtor, was also a Director of the Financial Creditor, thereby indicating common management and conflict of interest between both entities; and
  - v. The claim amounting to ₹2,63,08,618/- with alleged interest @18% per annum has not been substantiated by any cogent or credible documentary evidence.
- e. The Respondent stated that the alleged transactions referred to in the petition are ex-facie barred by limitation. The alleged transactions occurred between 01.04.2018 and 18.03.2019, whereas the first demand notice was issued only on 16.02.2024



and duly replied to on 24.02.2024. Accordingly, the claim is prima facie time-barred. A time-barred debt cannot form the basis for initiation of CIRP under the Insolvency and Bankruptcy Code, 2016. The expressions “due” and “due and payable” under Sections 3(11) and 3(12) of the Code contemplate a legally enforceable debt, i.e., one not barred by limitation. As held by the Hon’ble Supreme Court in *B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*, (2018) SCC OnLine SC 1921, the provisions of the Limitation Act apply with full force to proceedings under the IBC, and the Adjudicating Authority has no power to extend the period of limitation. Once the limitation period expires, the claim becomes stale and unenforceable in law, and therefore, cannot be a ground to trigger CIRP.

- f. It is pertinent to note that **Mr. Ramesh Duggar** himself served as a Director of the Corporate Debtor from 29.09.2017 to 16.02.2019 and also held the position of Chief Financial Officer during the relevant period. **He was simultaneously a Director of the Financial Creditor.** It is submitted that Mr. Duggar was in control of the affairs of both entities and was responsible for the alleged ledger entries, which were made at his instance without any supporting evidence of actual disbursement or loan transaction. The purported entries are mere book adjustments, created without any underlying transaction of loan. Owing to his dual role and control over both companies, there was no independent oversight



to prevent such irregularities. Mr. Duggar, being a close associate of Mr. Jaideep Mirchandani, misused the trust reposed in him and manipulated the records to suit his own interests. It is further submitted that, as stated in the reply dated 24.02.2024, a substantial sum of ₹5,39,88,116/- has already been paid to M/s Samriddhi Mega Structure Ltd.

- g. It is essential to note that Late Shri Surinder Kumar Kaushik held 99.99% of the paid-up share capital of *Zexus Air Services Pvt. Ltd.* (operating under the brand name “Zoom Air”), while Shri Ram Kishan Sharma held approximately 1,000 shares, constituting 0.01% of the company’s shareholding. Late Shri Kaushik had proposed to commence scheduled passenger airline operations but was facing severe financial constraints and was overburdened with market borrowings and tax liabilities. In this context, Shri Ramesh Duggar, Director of *Samriddhi Mega Structure Ltd.*, was nominated by Late Shri Kaushik and was introduced in the process of executing a Share Purchase Agreement dated 11.03.2016. Shri Duggar was also entrusted with managing the financial affairs of Late Shri Kaushik, who had proposed to sell his entire shareholding and obtain the company’s NOC to settle his outstanding debts, liabilities, and litigations for a total consideration of ₹2,00,49,000/-. It was agreed that the said consideration would be paid to the nominee account of Late Shri Kaushik, namely Samriddhi Mega Structure Ltd.



- h. Accordingly, the Corporate Debtor transferred the consideration amount towards acquisition of the shares to the account of the Financial Creditor, acting as the nominee of Late Shri Kaushik, with the intent of securing a liability-free transfer of equity. However, Shri Ramesh Duggar, who was responsible for settling the outstanding liabilities and substantial tax dues, failed to perform his obligations due to his dishonest intent, resulting in heavy penalties and financial losses to the Corporate Debtor in the process of settling the company's dues and liabilities.
- i. It is submitted that, apart from the payment of ₹5,39,88,116/- made by the Corporate Debtor to *Samriddhi Mega Structure Ltd.* between 17.03.2016 and 01.07.2019, an additional sum of ₹2,00,00,000/- was remitted directly from the account of Mr. Ravi Shankar Singh, an investor in the Corporate Debtor, to the account of *Samriddhi Mega Structure Ltd.* through RTGS on 18.03.2016. Thus, a total amount of ₹7,39,88,116/- was transferred to *Samriddhi Mega Structure Ltd.* The alleged Financial Creditor has misappropriated the said funds, as detailed in the reply dated 24.02.2024.

**5. REJOINDER FILED ON BEHALF OF APPLICANT**

- a. The Applicant in its rejoinder denied that the amount transferred to the Corporate Debtor as an unsecured loan falls outside the ambit of “financial debt” under Section 5(8) of the Code. It is



submitted that “financial debt” includes loans advanced to finance the business operations of a corporate entity. The funds transferred to the Corporate Debtor were made through proper banking channels to enable it to meet its financial obligations, including payment of wages and operational expenses, as the company was facing acute liquidity constraints. The said loan has been consistently reflected in the balance sheets of the Corporate Debtor as an unsecured loan.

- b. It has alleged that the Corporate Debtor has neither denied the receipt of funds nor produced any bank statements to establish the availability of sufficient balance during the relevant period. It is further submitted that the Board of Directors of the Corporate Debtor had duly passed a resolution authorizing the borrowing from the Financial Creditor, as recorded in the minutes of the Board meetings held in 2017. The failure of the Corporate Debtor to produce such records or bank statements is a deliberate attempt to conceal its true financial condition.
- c. The Applicant stated that the present application is within the limitation period as the Corporate Debtor has continuously acknowledged the debt by reflecting it as an unsecured loan in its balance sheets, which constitutes a fresh cause of action. The Financial Creditor had submitted its claim before the IRP in C.P. No. IB 421/ND/2020, which was stayed by the NCLAT in Company Appeal (AT)(Ins) No. 363/2022. Following a settlement between the



parties, the appeal was disposed of and the Financial Creditor withdrew its intervention application on 22.03.2023. This, along with the acknowledgment of debt and claim submission, resets the limitation period.

- d. It is also submitted that the funds were arranged by Shri Ramesh Duggar, then Director and CFO of the Corporate Debtor, at the request of its shareholders to meet urgent operational needs. These amounts were transferred through banking channels as unsecured loans and reflected in the Corporate Debtor's balance sheets. Thus, the present application is timely, and the limitation objection is without merit.

**IA 823/ND/2025**

**(Under Section 65 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016)**

- a. The present application (IA/823/ND/2025) is filed by the Corporate Debtor, who is CD in C.P. (IB) No. 735 of 2024. It is submitted that the Section 7 petition filed by the Respondent, *M/s Samriddhi Mega Structures Ltd.*, has been instituted mala fide and maliciously, without any due or payable amount owed by the Applicant to the Respondent.
- b. It is submitted that upon reviewing the records of the Corporate Debtor in light of the statements made by the Financial Creditor in its rejoinder, it was discovered that the alleged Financial Creditor had committed fraud against the Applicant. It is alleged



that on 17.03.2016, the Financial Creditor raised a bill of ₹2,59,91,500/- against the Corporate Debtor, purportedly as professional fees/charges. Further inquiry revealed that Mr. Ramesh Duggar, who was the CFO of the Corporate Debtor at the relevant time, is also the Founder Director of the Financial Creditor, which is effectively his family company, with other directors being Ms. Ranjana Duggar and Mr. Rajeev Duggar.

- c. It is submitted that Mr. Ramesh Duggar, being in charge of both the Financial Creditor and the Corporate Debtor, committed serious financial fraud, including falsification of records of the Corporate Debtor. Upon discovery of such fabricated bills and entries, Mr. Duggar assured the management of the Corporate Debtor that the amounts fraudulently transferred to M/s Samriddhi Mega Structure Ltd. would be repaid with interest. Pursuant thereto, the Respondent made partial repayments in instalments. Additionally, amounts totalling approximately ₹40,00,000/- were paid to Mr. Duggar on his promise to repay the full sum.
- d. It is submitted that *M/s Samriddhi Mega Structure Ltd.* is a mere shell company without any substantive business activity and has not provided any professional services as alleged. The purported bill relied upon by the Financial Creditor is fraudulent, as the Financial Creditor had no specialized engagement with the Corporate Debtor.



- e. When the alleged fraud was discovered, no strict action was taken against Mr. Ramesh Duggar or his company despite repeated pleas, relying on his assurance to return the amounts illegally transferred. Being the signatory and in control of the accounts, Mr. Duggar transferred the funds from his own account to the Corporate Debtor's account, deceptively treating such amounts as a loan rather than restitution of fraudulently obtained funds.
- f. Further, apart from the aforementioned fraud, there were several other transactions whereby a sum of approximately ₹7,39,88,116/- was transferred from the Corporate Debtor's account to *Samriddhi Mega Structure Ltd.*, without reconciliation or accounting. Such outstanding amounts remain due to the Corporate Debtor. It is submitted that the Financial Creditor, with mala fide intent, has filed the present frivolous application to pre-empt the Corporate Debtor from recovering these amounts.
- g. It is submitted that on examination of the accounts, the Applicant is liable to repay over ₹7.40 crores, of which only ₹2,63,08,618/- has been refunded, leaving a balance of ₹4,77,08,777/- payable by the Applicant. Mr. Ramesh Duggar, who managed the finances and accounts of the Corporate Debtor, abused his position, mismanaging affairs at his discretion.
- h. As admitted by the Applicant in its rejoinder, the alleged amounts were not financial aid as claimed in the Section 7 application, but were the result of multiple entries between the Corporate Debtor



and Financial Creditor made at Mr. Duggar's instance. The entry of ₹2,63,08,618/- was deliberately created and retained as payable with mala fide intent, which has now been exposed and appropriate action initiated.

- i. It is submitted that Mr. Ramesh Duggar, who managed the finances and accounts of the Corporate Debtor, abused his position to mismanage affairs at his discretion. As admitted by the Applicant in its rejoinder, the alleged transaction was not financial aid as claimed in the Section 7 application, but the result of manipulated entries between the Corporate Debtor and Financial Creditor at Mr. Duggar's instance. The entry of ₹2,63,08,618/- was intentionally created and retained as payable with mala fide intent, which has now been exposed and addressed. There is no recoverable debt in favour of the Applicant; rather, a substantial amount is due from it. The alleged loan reflected in the Corporate Debtor's balance sheet did not exist in 2017-18, 2018-19, or 2019-20, and was subsequently introduced through deliberate manipulation by Mr. Duggar, who controlled and managed the accounts through his associates.
- j. It is pertinent to note that Mr. Ramesh Duggar himself was the Director of the Corporate Debtor from 29.09.2017 to 16.02.2019 and also served as its CFO. He was simultaneously the Director of the Financial Creditor. The alleged loan entries were made at his instance without any supporting evidence. There was no



actual loan transaction, only book entries created by Mr. Duggar, who was in control of both the Corporate Debtor and the Financial Creditor, with no oversight over his actions. Mr. Duggar, being a close associate of Mr. Jaideep Mirchandani, misused the trust reposed in him and manipulated records to his advantage. As stated in the reply dated 24.02.2024, an amount of ₹5,39,88,116/- was paid to M/s Samriddhi Mega Structure Ltd.

- k. It is further relevant to mention that Late Sh. Surinder Kumar Kaushik held 99.99% of the paid-up share capital of Zexus Air Services Pvt. Ltd. (“Zoom Air”), while Sh. Ram Kishan Sharma held about 0.01%. Late Sh. Kaushik, who intended to start a scheduled passenger airline, faced financial distress and heavy liabilities. Consequently, he nominated Mr. Ramesh Duggar, Director of Samriddhi Mega Structure Ltd., to assist in executing a Share Purchase Agreement dated 11.03.2016 and to handle his financial affairs. As per the agreement, the Corporate Debtor transferred ₹2,00,49,000/- towards purchase of Late Sh. Kaushik’s shares to the nominee account of Samriddhi Mega Structure Ltd. (the Financial Creditor). However, Mr. Duggar, entrusted with settling the liabilities and tax dues, failed to discharge these responsibilities due to his dishonest conduct, causing the Corporate Debtor to suffer heavy losses and penalties.



## ANALYSIS AND FINDINGS

6. This Tribunal has heard the learned counsel for the parties and carefully examined the pleadings, documents, and submissions placed on record. The core issue for determination is whether the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 is vitiated by malice or filed with fraudulent intent, thereby attracting the provisions of Section 65 of the Code.
7. After considering the submissions made by both parties and examining the pleadings and documents on record, the core issue for determination before the bench is whether the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 is vitiated by malice or filed with fraudulent intent, thereby attracting the provisions of Section 65 of the Code. Accordingly, at this stage, it is appropriate to refer to the provisions contained in Section 65 of the IBC, 2016.

***“65. Fraudulent or malicious initiation of proceedings. –***

*(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

*(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*

*(3) If any person initiates the pre-packaged insolvency resolution process—*

*(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or*

*(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall*



*not be less than one lakh rupees, but may extend to one crore rupees.”*

8. A plain reading of Section 65 of the Insolvency and Bankruptcy Code reveals that it does not specifically prescribe who may file an application under the said provision. Therefore, **any person who is affected or aggrieved by the fraudulent initiation of the Corporate Insolvency Resolution Process (CIRP) may invoke Section 65 before this Tribunal.** Furthermore, the determination of a person's locus to file a case depends on the legal provision under which the case is instituted and the nature of reliefs sought.
9. It is a trite law that the company once incorporated, holds a separate legal entity in the eyes of law where the company acts under its own name, has a seal of its own and sues or gets sued in the same manner as an individual. A company is governed by the Board of Directors who are primarily responsible for managing the affairs of the Company.
10. As per the case of the Financial Creditor, unsecured loans were advanced to the Corporate Debtor to meet its working capital requirements, including payment of wages, day-to-day operational expenses, inventory costs, ground rent for aircraft, and officers' salaries. It is submitted that these transactions were routed through proper banking channels and have been duly reflected in the audited balance sheets of the Corporate Debtor for the financial years 2020–2021, 2022–2023, and 2023–2024 under the head of “Unsecured Loans,” thereby evidencing the existence of the said financial transactions.



**11.** However, on perusal of the casefile we observe that Applicant claiming to be Financial Creditor, has failed to produce any credible or admissible evidence on record to substantiate the existence of a 'financial debt' as defined under Section 5(8) of the Code. There is a complete absence of any formal financial arrangement between the alleged Financial Creditor and the Corporate Debtor. Specifically:

- i. There is no loan agreement or any supporting document on record evidencing that the amounts in question were disbursed as loans to the Corporate Debtor.
- ii. There is an absence of any record of default, either with an Information Utility or any Credit Information Company.
- iii. No terms of repayment have been stipulated, nor is there any provision for payment of interest.
- iv. The Financial Creditor has not established that it was to receive any consideration or compensation in lieu of the time value of money, which is an essential element for a transaction to qualify as a “financial debt” under the Code.

**12.** In the present case it has been brought to our notice that Mr. Ramesh Duggar, being in control of both the Financial Creditor and the Corporate Debtor, committed serious financial irregularities, including falsification and manipulation of the Corporate Debtor’s records. Upon discovery of these fraudulent entries, Mr. Duggar assured the management that the amounts wrongfully transferred to his company, M/s Samriddhi Mega Structure Ltd., would be refunded with interest.



Pursuant thereto, partial repayments were made by M/s Samriddhi Mega Structure Ltd. to the Corporate Debtor.

**13.** On examination of the Financial Creditor's bank statements, it is evident that funds originating from Mr. Duggar were routed through the Financial Creditor's account and subsequently transferred to the Corporate Debtor, clearly indicating his direct involvement in the fraudulent transactions. It is further submitted that, at Mr. Duggar's instance, the said repayments were wrongly recorded as unsecured loans in the Corporate Debtor's books instead of reversal of the fraudulent transfers. As per the submission of the Respondent / Corporate Debtor, upon scrutiny, these discrepancies were rectified in the income tax returns of the Corporate Debtor, and it stands established that no unsecured loan or outstanding liability exists towards the alleged Financial Creditor.

**14.** In the present case, it is significant to note that the amounts repaid by the alleged Financial Creditor, being proceeds arising out of its own fraudulent acts, were utilized as working capital or for meeting short-term business exigencies, payment of wages, or other operational expenses, as incorrectly contended by the alleged Financial Creditor. Without admitting the correctness of any averments made in the application, it is submitted that the utilization and application of funds of the Corporate Debtor were entirely within its own domain and not subject to any control or direction of the alleged Financial Creditor. It is apparent from the record that Mr. Ramesh Duggar, who was in



charge of both the Corporate Debtor and the alleged Financial Creditor during the relevant period, grossly misused his fiduciary position to manipulate accounts and fabricate documents for personal gain and to benefit his company, M/s Samriddhi Mega Structure Ltd.

- 15.** It is further submitted that the alleged Financial Creditor, despite being in existence for more than three decades, has exhibited no substantive business operations or growth, thereby indicating that it is merely a shell entity under the control and influence of Mr. Duggar and his associates, being used as a conduit for fraudulent transactions. Appropriate complaints in this regard have already been initiated before the competent authorities.
- 16.** We further record that the alleged advancement of funds, if any, was neither in the ordinary course of business nor pursuant to any commercial lending activity. Mere transfer of funds between related parties or family members cannot, by itself, be construed as a 'financial debt' under the Code unless it satisfies the essential criteria stipulated under Section 5(8), including disbursement against consideration for the time value of money. These transactions, lacking commercial substance, appear to be internal in nature and do not serve the purpose or intent of the insolvency framework, thereby undermining the very objectives of the Code.
- 17.** Now a question arises, whether the Financial Creditor has filed the Section 7 application with a malicious and fraudulent intent. The term malicious has not been defined anywhere under IBC, 2016. Therefore,



at this juncture we refer to the Judgement of Hon'ble Supreme Court, passed in the matter of **West Bengal State Electricity Board Vs Dilip Kumar Ray, Civil Appeal 5188 of 2006 dated 24.11.2006**, wherein the term '**malicious**' has been discussed. The extracts of the Judgement are reproduced below: -

*"Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin malitia means badness, physical or moral - wickedness in disposition or in conduct – not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. **When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive.**"*

**(Emphasis Supplied)**

**18.** For the sake of discussion, a reference is also made to the following extracts from the relevant decisions of the Hon'ble NCLAT:

(i) **Pawan Kumar Ex-Director and Shareholder Vogue Clothiers Pvt. Ltd. Vs. Utsav Securities Pvt. Ltd. [(2021)]**



**ibclaw.in 368 NCLAT]** vide Judgement dated 03.08.2021 has observed:

*"32. Section 65 provides that where any person furnishes any information under Section 7, which is false in material particulars, knowing it to be false or omits any material facts, knowing it to be material such person shall be punished with fine.*

(ii) **Shri Amit Katyal Vs. Mrs Meera Ahuja [(2020) ibclaw.in 326 NCLAT]**, vide judgment dated 09.11.2020 has observed as follows:

*"46. It is necessary to keep in mind that Sec 65 of the Code is not meant to negate the process U/S 7 or 9 of the Code. Penal action U/S Sec 65 can be taken only when the provision of the Code has been invoked fraudulently, with malicious intent.*

*48. No penalty can be saddled either under Section 65(1) or (2) of the Code without recording an opinion that a prima facie case is established to suggest that a person 'fraudulently' or with malicious intent for the purpose other than the resolution of Insolvency or Liquidation or with an intent to defraud any person has filed the Application."*

(iii) **Ashmeet Singh Bhatia v. Pragati Impex India Pvt. Ltd. and Anr. [(2024) ibclaw.in 63 NCLAT]** vide judgment dated 02.02.2024 observed as under:

*"16. The power under Section 65 of the Code can be exercised by the Adjudicating Authority only after satisfying that grounds as mentioned exist, if the Adjudicating Authority come to the conclusion that insolvency proceedings have been initiated fraudulently or with malicious intent for any other purpose other than for the resolution of insolvency of the Corporate Debtor, it can impose penalty as provided in the provision. While exercising jurisdiction under Section 65, the Adjudicating Authority is also fully entitled to close CIRP*



process and pass all consequential order. The mere fact that Section 7 Application has been admitted does not denude the jurisdiction of the Adjudicating Authority to examine the application under Section 65 of the Code.”

- (iv) **Unigreen Global Pvt. Ltd. v. Punjab National Bank and Ors. [Company Appeal (AT)(Ins.) 81 of 2017]** decided on 01.12.2017 and held as under:

*“37. From the aforesaid provision, it is clear that for imposition of penalty under Section 65, the Adjudicating Authority on the basis of record is required to form prima facie opinion that the person (Financial Creditor / Corporate Applicant / Operational Applicant) has filed the petition for initiation of proceeding “fraudulently” or “with malicious intent” for the purpose other than the resolution of the insolvency or liquidation or that voluntary liquidation proceedings has been filed with the intent to defraud any person.*

*38. No such penalty under sub-section (1) or (2) of Section 65 can be imposed by the Adjudicating Authority without recording opinion for coming to the conclusion that a prima facie case is made out to suggest that the person “fraudulently” or “with malicious intent” for the purpose, other than the resolution insolvency or liquidation or with the intent to defraud any person has filed the application.”*

- 19.** A plain reading of Section 65(1) of the Code makes it clear that its invocation requires satisfaction of the following conditions:
- (i) Initiation of insolvency resolution process or liquidation proceedings;
  - (ii) Existence of fraudulent or malicious intent; and
  - (iii) Purpose other than the resolution of insolvency or liquidation.
- 20.** On a careful consideration of the facts of the present case in light of the provisions of Section 65, it is an admitted position that the Financial Creditor has initiated proceedings under Section 7 of the Code, seeking



commencement of the Corporate Insolvency Resolution Process against the Corporate Debtor.

- 21.** The Corporate Debtor has placed on record credible evidence that the ledger entries merely reflect inflows and outflows in the nature of a running account, lacking the commercial characteristics of a borrowing as contemplated under Section 5(8)(f) of the IBC. While the authorized representative of the Financial Creditor claims that the amounts were advanced as working capital on instructions of the Board of Directors and Managing Director, the Respondent denies having borrowed any such working capital.
- 22.** We further note that the alleged disbursement of loans by the Financial Creditor is stated to have commenced on 01.04.2018 and continued until 18.03.2019. However, the balance sheets of the Corporate Debtor for the financial years 2018–19 and 2019–20 do not reflect any such loans. The purported loans only appear in the disclosures on borrowings in the financial years 2020–21 and 2021–22, as prepared by A.K.C. & Associates, Chartered Accountants, the same firm that prepared the Financial Creditor’s statements, at the instance of Mr. Ramesh Duggar. It is further noted that Mr. Duggar, who was the CFO of the Corporate Debtor and also its Director from 29.09.2017 to 16.02.2019, is presently the Director of the Financial Creditor, underscoring his direct involvement in the preparation and presentation of such disclosures.



- 23.** That in relation to the fraud allegedly committed by the Financial Creditor and its Director, Mr. Ramesh Duggar, FIR No. 062 dated 07.05.2025 has been registered at PS EOW, Delhi under Sections 406, 409, 420, and 120B of the IPC, and the matter is presently pending further investigation.
- 24.** In light of the above, it is evident that the facts of the present case squarely fall within the ambit of Section 65 of the Code. The Financial Creditor's conduct constitutes a malicious initiation of insolvency proceedings for ulterior purposes, and this Tribunal cannot condone such abuse of the insolvency framework.
- 25.** Having regard to the conspectus of fact and circumstances of the present case and the material placed on record, this Adjudicating Authority is not satisfied as to the existence of a "Financial Debt" and the "default" in the present matter. In light of the foregoing analysis, this Tribunal is of the considered opinion that:
- A. The application filed under Section 7 of the Code is vitiated by fraudulent and malicious intent. The initiation of CIRP is an abuse of the process of law and cannot be allowed to proceed.
  - B. The application under Section 65 i.e. **IA/823/ND/2025** of the Code is hereby **allowed**.
  - C. The main Petition i.e. **C.P. (IB) NO. 735 OF 2024** stands **dismissed**.
  - D. The Financial Creditor is directed to pay a penalty of **Rs. 3,00,000/- (Rupees Three Lakh Only)** under Section 65(1) of



the Code, to be deposited with the Insolvency and Bankruptcy Board of India (IBBI) within 30 days from the date of this order.

E. The Registry is further directed to forward a copy of this order to the IBBI for its records and necessary action.

**Sd/-**

**ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

**Sd/-**

**MANNI SANKARIAH SHANMUGA SUNDARAM  
MEMBER (JUDICIAL)**