



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

C.P. (IB) NO. 655/ND/2025

IN THE MATTER OF:

L H SUGAR FACTORIES LIMITED

HAVING ITS REGISTERED OFFICE AT

CIVIL LINES, PILIBHIT,

UTTAR PRADESH - 262001

THROUGH AUTHORIZED SIGNATORY: MR. YUGAL KISHOR AGARWAL

...APPLICANT

VERSUS

OSWAL OVERSEAS LIMITED

HAVING ITS REGISTERED OFFICE AT

98-A, 2nd FLOOR, NAMBERDAR ESTATE,

TAIMOOR NAGAR, DELHI - 110065

...CORPORATE DEBTOR

ORDER DELIVERED ON : 08.06.2026

CORAM:

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

SHRI ATUL CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

: Mr. Pratham Mehrotra, Adv.

For the CD

: Mr. Arun Saxena, Ms. Shanu Pastore

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This is an Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)



Rules, 2016, by L H Sugar Factories Limited through its Authorized Representative (hereinafter referred to as the Financial Creditor/Applicant), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Oswal Overseas Limited (“Corporate Debtor”).

2. The Corporate Debtor i.e., Oswal Overseas Limited was incorporated on 31.05.1984, having CIN: L74899DL1984PLC018268 under the Companies Act, 1956. Its registered office is at 98A, Second Floor, Namberdar Estate, Taimoor Nagar, NFC, South Delhi, New Delhi, Delhi, India, 110065. Therefore, this Bench has jurisdiction to deal with this petition.

3. **SUBMISSIONS OF THE FINANCIAL CREDITOR**

- i. The Applicant/Financial Creditor, L H Sugar Factories Limited, has filed the present petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, Oswal Overseas Limited.
- ii. The Financial Creditor states that the Corporate Debtor approached it in August, 2024 seeking a short term loan of Rs. 2,25,00,000/-, citing acute financial distress and failure to pay sugarcane prices to their supply farmers. Around the same time, the Corporate Debtor also presented a proposal for purchase of the company to the Financial Creditor, which, according to the Financial Creditor, was mutually exclusive of the loan transaction.
- iii. The Board of the Financial Creditor, vide Resolution dated 24.08.2024, sanctioned the loan of Rs. 2,25,00,000/-. The said Board Resolution has been placed on record.



- iv. Pursuant thereto, the Financial Creditor disbursed the sanctioned loan amount to the Corporate Debtor through cheques, as under:

| Date | Cheque No. | Amount |
|-------------|-------------------|-------------------|
| 06.09.2024 | 001733 | Rs. 2,00,00,000/- |
| 01.10.2024 | 016476 | Rs. 20,00,000/- |
| 01.10.2024 | 016477 | Rs. 5,00,000/- |

The cheques and bank statement evidencing disbursal/encashment have been placed on record.

- v. Thereafter, the Corporate Debtor intimated the need for further loan amounts, to the cumulative extent of Rs. 5,00,00,000/-, including the previously sanctioned amount. Considering the increased quantum, the parties agreed that the amount already disbursed would, regardless, be refunded within two months, i.e. by 30.11.2024.
- vi. The Applicant submitted that, in furtherance thereof, the Board of the Corporate Debtor passed Resolution dated 01.10.2024, according consent to avail unsecured/secured loan from the Financial Creditor up to a maximum amount of Rs. 5,00,00,000/-. The said Board Resolution has been placed on record as Annexure A/5.
- vii. The Financial Creditor further states that in a meeting held in New Delhi on 28.10.2024, organized by an intermediary, the Corporate Debtor was informed that the Financial Creditor was not interested in pursuing any transaction of purchase of the Corporate Debtor.
- viii. The Financial Creditor states that the Corporate Debtor failed to repay the disbursed amount of Rs. 2,25,00,000/- by 30.11.2024 and thereby first committed default. Thereafter, the Financial



Creditor issued Demand Notice dated 25.01.2025, calling upon the Corporate Debtor to repay the amount within 15 days. Despite service thereof, the Corporate Debtor failed to repay the amount on or before 10.02.2025. The Financial Creditor thereafter issued another demand notice, stated to be dated 22.05.2025. The notices have been placed on record as Annexure A/6 and Annexure A/7 respectively. The Applicant has claimed Rs. 2,44,38,082.19/- as on 30.10.2025, comprising principal of Rs. 2,25,00,000/- and default interest of Rs. 19,38,082.19/- calculated at the rate of 12% per annum from 10.02.2025 to 30.10.2025. The computation has been placed on record as Annexure A/12.

- ix. The Financial Creditor relies upon the Balance Sheet of the Corporate Debtor for FY 2024-25, wherein the amount of Rs. 2,25,00,000/- is stated to have been reflected under other liabilities. The Financial Creditor has also disclosed the said amount as an unsecured loan in its own Balance Sheet for FY 2024-25. The debt and default are also stated to be recorded with NeSL/Information Utility. The relevant financial statements and NeSL Record of Default have been placed on record.
- x. The Financial Creditor further states that it came to know through a signboard that the Corporate Debtor's sugar mill at Nawabganj, Bareilly had been attached by the Sub-District Magistrate, Nawabganj, for failure to pay sugarcane price. According to the Financial Creditor, the same is a supporting circumstance reflecting the Corporate Debtor's financial distress/inability to pay.
- xi. Pursuant to order dated 08.12.2025, this Adjudicating Authority directed the Financial Creditor to file an affidavit stating that the present petition is not collusive, along with statements of accounts for two years and averments on maintainability. In



compliance thereof, the Financial Creditor filed affidavit dated 18.12.2025 stating that the petition is maintainable, is not collusive, and has been filed on account of actual and continuing default by the Corporate Debtor. The statement of accounts for the period 01.04.2023 to 08.12.2025 has also been placed on record as Annexure-3 thereto.

- xii. It is further submitted that reliance has been placed upon **Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., (2023) 3 SCC 753**, to contend that an advance/loan need not necessarily carry interest in order to qualify as “financial debt” under Section 5(8) of the Code, provided the transaction bears the commercial effect of borrowing. The Financial Creditor accordingly submits that, even otherwise, the amount disbursed to the Corporate Debtor constitutes financial debt within the meaning of Section 5(8) of the Code.
- xiii. On the basis of the aforesaid documents, including the Board Resolutions, cheques, bank statements, demand notices, Balance Sheet disclosures, NeSL Record of Default and compliance affidavit, the Financial Creditor submits that there exists a financial debt exceeding the threshold prescribed under the Code and that the Corporate Debtor has committed default in repayment thereof.
- xiv. In view of the aforesaid, the Financial Creditor has prayed for admission of the present Petition/Application under Section 7 of the Code and for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

4. **REPLY BY THE CORPORATE DEBTOR**

- i. The instant Petition/Application has been filed by L.H. Sugar Factories Limited (“Applicant/Financial Creditor”) claiming itself



to be a Financial Creditor qua the Respondent, namely Oswal Overseas Limited (“Respondent/Corporate Debtor”), under Section 5(7) of the Insolvency and Bankruptcy Code, 2016 (“Code”). The Applicant seeks initiation of Corporate Insolvency Resolution Process (“CIRP”) against the Respondent under Section 7 of the Code on the basis of the alleged amount advanced to the Respondent, which the Applicant characterises as a loan. The Applicant claims that the Respondent is indebted to it for an amount of Rs. 2,44,38,082.19/- (Rupees Two Crore Forty-Four Lakh Thirty-Eight Thousand Eighty-Two and Nineteen Paise only).

- ii. The Corporate Debtor has opposed the Petition, inter alia, on the basis of the averments made in the Petition, the documents relied upon by the Applicant, and the documents filed along with the Reply. The principal objections raised by the Corporate Debtor are as follows:
 - (a) the alleged transaction does not constitute a financial debt within the meaning of Section 5(8) of the Code;
 - (b) the amount was advanced for the acquisition of business of the Corporate Debtor and not as a loan for the time value of money;
 - (c) the Applicant has suppressed material facts relating to the acquisition of business of the Corporate Debtor; and
 - (d) the Petition has been filed as a recovery mechanism to recover the amount advanced towards the acquisition of business of the Corporate Debtor and constitutes an abuse of the process of law.
- iii. The Corporate Debtor submits that the Applicant has suppressed material facts relating to the proposed acquisition/business transaction between the parties, which, according to the Corporate Debtor, are material for adjudication of the present Petition. It is further submitted that the Application is an abuse



of process and has been filed to recover earnest money/strategic advance paid in relation to a failed acquisition/business deal under the guise of “financial debt”. In support thereof, the Corporate Debtor has relied upon the email, WhatsApp transcripts and Share Purchase Agreement forming part of Annexure R-2 (Colly).

- iv. The Corporate Debtor has relied upon the Applicant’s own averments in the Petition/Synopsis, wherein it is stated that after due diligence in the months of September–October 2024, the Corporate Debtor was unequivocally informed that the Applicant was not willing/interested in pursuing any transaction of purchase. According to the Corporate Debtor, the said statement constitutes a material admission and demonstrates that the amount was advanced in relation to the proposed acquisition/purchase transaction and not as a loan carrying consideration for time value of money.
- v. It is further submitted that the parties had been in active negotiations since at least 2022, allegedly mediated through Mr. Mohit Singhal, Statutory Auditor, and that the negotiations involved extensive due diligence, physical verification of assets, sharing of financial data, land details and family charts, culminating in preparation of a Share Purchase Agreement. In support of the aforesaid contention, reliance is placed upon the email, WhatsApp transcripts and SPA forming part of Annexure R-2 (Colly).
- vi. It is also submitted that the Financial Creditor had engaged M/s Cyril Amarchand Mangaldas for structuring the acquisition of the Corporate Debtor, and reliance is placed upon an email dated 06.08.2024 forming part of Annexure R-2 (Colly), wherein the settlement is stated to be a sub-component of the larger acquisition transaction. According to the Corporate Debtor, the



said email shows that the proposed transaction was for acquisition of 100% shareholding/control of the Corporate Debtor.

- vii. It is further submitted that the Share Purchase Agreement forming part of Annexure R-2 (Colly) contemplated withdrawal of pending legal proceedings and settlement of dues of the Corporate Debtor as steps connected with completion of the proposed acquisition, and not as an admitted insolvency default.
- viii. It is further submitted that on 05.09.2024, Mr. Mohit Singhal (Statutory Auditor) allegedly confirmed that the Financial Creditor had agreed to transfer Rs. 2,00,00,000/- as part of settlement/token advance. According to the Corporate Debtor, the said amount was received in furtherance of the settlement/acquisition transaction and not towards resolution of any financial debt under the Code. In support thereof, the Corporate Debtor has relied upon WhatsApp transcripts placed on record as part of Annexure R-2 (Colly).
- ix. It is submitted that the Applicant is attempting to use the machinery of the Code as a recovery mechanism and as a tool to enforce an acquisition at a specific price, which is impermissible. The Corporate Debtor has contended that the amount of Rs. 2,00,00,000/- was received towards the proposed acquisition/business transaction and cannot be termed as a loan under Section 5(8) of the Code.
- x. It is further submitted that since the Applicant voluntarily withdrew from the proposed purchase transaction after conducting due diligence, the issue, if any, regarding forfeiture or refund of advance would be governed by the acquisition understanding between the parties, oral/implied, and would fall within the realm of civil/commercial jurisdiction. It is also



submitted that there is no specific agreement stipulating that the advance would be treated as a loan with interest upon failure of the proposed transaction.

- xii. The Corporate Debtor has placed reliance upon ***Rita Kapur v. Invest Care Real Estate LLP, Company Appeal (AT) (Insolvency) No. 111 of 2020***, to contend that monies advanced for the purchase of shares or assets, where the deal subsequently fails, constitute a claim for refund/restitution and do not qualify as “**financial debt**” under Section 5(8) of the Code unless there is a specific agreement stipulating the treatment of such advance as a loan with interest upon deal failure.
- xiii. The Corporate Debtor has further disputed the reliance placed by the Applicant on the Board Resolution dated 01.10.2024, contending that the first amount of Rs. 2,00,00,000/- was received on 06.09.2024, whereas the said resolution was passed only on 01.10.2024. It is therefore submitted that the said resolution cannot retrospectively convert the alleged acquisition advance into a loan. The Board Resolution passed by the Corporate Debtor along with bank statements is placed on record as Annexure R-5.
- xiv. It is submitted that the claim of interest at the rate of 12% per annum is false, spurious and unsupported by any loan agreement, promissory note or financial contract. The Corporate Debtor submits that the Board Resolution dated 24.08.2024 relied upon by the Applicant itself records the amount as being without interest.
- xv. It is further submitted that the demand for interest is unilateral and was asserted for the first time in the legal notice dated 25.01.2025 to colour the alleged debt as “financial debt”. The Corporate Debtor further submits that the Applicant’s own



audited financial statements do not appear to reflect corresponding interest income at 12% on the alleged loan amount. In support thereof, reliance is placed upon the Board Resolution dated 24.08.2024 annexed as Annexure R-3, and the Financial Creditor's financial statements annexed as Annexure R-6.

- xv. The Corporate Debtor has further relied upon ***Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.***, reported as **(2023) 3 SCC 753**, to submit that **“for a debt to be ‘Financial’, it must have the commercial effect of a borrowing”** and that an interest-free advance given for a specific purpose does not satisfy the test of **“Time Value of Money”** under Section 5(8) of the Code. It is accordingly submitted that the amount advanced in the present case, being towards the proposed acquisition/business transaction, cannot be treated as financial debt under Section 5(8) of the Code.
- xvi. It is further submitted that the alleged date of default, i.e., 10.02.2025, is arbitrary, as the transaction was not a loan with any fixed repayment schedule but an advance for a proposed transaction which, as per the Applicant's own case, remained active till September–October 2024. The Corporate Debtor has therefore contended that the alleged default date has been manufactured on the basis of the legal notice to create a cause of action under the Code.
- xvii. It is further submitted that mere reflection of the amount in the financial statements/books of accounts cannot, by itself, convert the nature of the transaction into a financial debt. The Corporate Debtor submits that the amount has been reflected as “Intercompany Advance” under Other Liabilities, and that such accounting treatment supports its defence that the amount was an advance and not a borrowing carrying consideration for time



value of money. The Corporate Debtor relies upon its financial statements placed on record as Annexure R-4.

- xviii. In view of the aforesaid submissions, the Corporate Debtor has sought dismissal of the present Petition/Application with costs and penal consequences against the Applicant under Section 65 of the Code, contending that the Application is fraudulent and malicious.

5. REJOINDER BY THE FINANCIAL CREDITOR:

- i. It is submitted that the amount of Rs. 2,25,00,000/- was disbursed by the Financial Creditor to the Corporate Debtor as an unsecured demand loan, while the proposal for acquisition was being considered parallelly. According to the Financial Creditor, the said amount was repayable on demand and was adjustable against any finalised purchase value only upon success of the acquisition talks.
- ii. It is submitted that the WhatsApp transcripts relied upon by the Corporate Debtor, forming part of Annexure R-2 (Colly) to the Reply, according to the Financial Creditor, show that rejection of the proposal for acquisition was intimated in the meeting dated 28.10.2024 and that the Corporate Debtor was thereafter called upon to refund/repay the disbursed amount.
- iii. It is further submitted that the Corporate Debtor has admitted that classification of the amount as a liability in its Balance Sheet dated 31.03.2025 acknowledges an obligation to pay/refund the disbursed amount. According to the Financial Creditor, the same constitutes an admission of liability on the part of the Corporate Debtor as on the date of default.
- iv. It is submitted that the reliance placed by the Corporate Debtor upon the proposed Share Purchase Agreement is misplaced, as the same was an unexecuted consultative document in bare shell



condition and did not specifically record the names of the contracting parties, number of shares or value of shares under sale. It is further submitted that the proposed SPA contemplated only an advance payment of Rs. 70,00,000/-, subject to fulfilment of certain conditions, and therefore the Corporate Debtor's plea that the entire amount of Rs. 2,25,00,000/- was paid as acquisition advance is disputed.

- v. It is submitted that the Financial Creditor has denied the allegation that it suppressed material facts. On the contrary, it is contended that the Corporate Debtor has attempted to conflate the loan transaction with the proposed acquisition transaction by placing partial documents and communications on record.
- vi. It is submitted that the claim of the Corporate Debtor that the amount was merely an acquisition/business advance is misconceived. The Financial Creditor has submitted that even if the amount is treated as refundable advance without interest, the same would still constitute financial debt having time value of money and commercial effect of borrowing under Section 5(8) of the Code.
- vii. The Financial Creditor has further submitted that the reliance placed by the Corporate Debtor on ***Rita Kapur v. Invest Care Real Estate LLP, Company Appeal (AT) (Insolvency) No. 111 of 2020***, is misplaced, as the said judgment does not lay down the proposition canvassed by the Corporate Debtor. It is submitted that the said case pertained to a financial creditor whose loan was converted into equity without consent and that the Section 7 petition therein was ultimately admitted. The Financial Creditor has further relied upon ***Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.***, reported as **(2023) 3 SCC 753**, to contend that a loan/refundable advance need not carry interest to qualify as **“financial debt”** under the Code.



- viii. It is submitted that the Financial Creditor has not claimed interest from the date of disbursement of the loan, but has claimed default interest only from the date of default, i.e., 10.02.2025, after expiry of the period granted under the demand notice dated 25.01.2025.
- ix. It is submitted that the Board Resolution dated 01.10.2024 was an internal document of the Corporate Debtor and was shared as proof of unsecured loan being availed from the Financial Creditor, pursuant to the Corporate Debtor's request for further loan. It is further submitted that any non-compliance under the Companies Act, 2013, if any, would be attributable only to the Corporate Debtor and cannot defeat the claim of the Financial Creditor.
- x. It is submitted that the present Petition is maintainable under Section 7 of the Code, as the principal amount of Rs. 2,25,00,000/- itself is above the statutory threshold. The Financial Creditor has, accordingly, sought admission of the Petition and initiation of CIRP against the Corporate Debtor.

ANALYSIS AND FINDINGS

6. We have heard the Ld. Counsel on behalf of the Financial Creditor and the Corporate Debtor and further perused the averments made in the Application, the Reply filed by the Corporate Debtor, the Rejoinder filed by the Financial Creditor, affidavits filed in compliance of the orders passed by this Adjudicating Authority and the documents placed on record.
7. The present Application has been filed by **L H Sugar Factories Limited** ("Applicant/Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code" or "IBC") seeking initiation of Corporate Insolvency Resolution Process against **Oswal Overseas Limited** ("Corporate Debtor") on the ground that the Corporate Debtor has committed default in repayment of financial debt. As per Part IV of Form



1, the amount claimed to be in default is **Rs. 2,44,38,082.19/-**, comprising principal amount of Rs. 2,25,00,000/- and interest, and the date of default is stated to be 10.02.2025.

8. It is the case of the Financial Creditor that an amount of Rs. 2,25,00,000/- was disbursed to the Corporate Debtor as an unsecured demand loan. The Financial Creditor has relied upon cheques, bank statements, demand notice, NeSL record, Board Resolutions and financial statements to contend that the amount was disbursed, remained unpaid and constitutes financial debt within the meaning of Section 5(8) of the Code.
9. We note that before analysing the facts of the instant case, it is important to understand the meaning of “financial debt”, as laid down under Section 5(8) of the Code. The relevant extract of Section 5(8) of the Code is reproduced hereinunder:

“5. Definitions. — In this Part, unless the context otherwise requires,—

(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.”

10. The principal issue for consideration is whether the amount disbursed by the Financial Creditor constitutes financial debt within the meaning of Section 5(8) of the Code. The disbursement of Rs. 2,25,00,000/- by the Financial Creditor to the Corporate Debtor is not seriously disputed. The Corporate Debtor has, however, sought to contend that the amount was not a loan but was paid in connection with a proposed acquisition of the business of the Corporate Debtor.



11. Upon consideration of the material placed on record, it is noticed that the Corporate Debtor has relied upon a proposed Share Purchase Agreement to contend that the amount was paid towards a contemplated acquisition transaction. However, no executed Share Purchase Agreement or any concluded acquisition agreement has been placed on record. The proposed Share Purchase Agreement relied upon by the Corporate Debtor remained unexecuted and does not establish that the amount of Rs. 2,25,00,000/- stood finally adjusted or appropriated towards acquisition consideration.

12. It is further observed that the Financial Creditor's audited financial statements for the financial year ending 31.03.2025 record the amount of Rs. 225.00 lakhs under Note 10 as "Loan to Other Company" and specifically state that the same represents loan given to Oswal Overseas Limited. Correspondingly, the Corporate Debtor's audited financial statements record an amount of Rs. 2,25,00,000/- under Note 15 as "Intercompany Advance" and further state that the Company has received an advance of Rs. 2,25,00,000/- from L.H. Sugar Factories Limited. Though the nomenclature employed by the parties is not identical, both sets of financial statements acknowledge the transaction and the subsisting outstanding amount between the parties.

13. The contention of the Corporate Debtor that the amount reflected as "Intercompany Advance" cannot be treated as financial debt is not acceptable. Mere nomenclature employed in the books of accounts is not conclusive of the true nature of a transaction. The substance of the transaction and the attendant circumstances are required to be examined. In the present case, the receipt of Rs. 2,25,00,000/- from the Financial Creditor stands acknowledged in the audited financial statements of the Corporate Debtor. The said amount is reflected under the head "Intercompany Advance" in Note 15 to the audited financial statements of the Corporate Debtor, wherein it is recorded that the Company has received an advance of Rs. 2,25,00,000/- from L.H. Sugar Factories Limited. Further, no material has been placed on record to



demonstrate that the said amount stood finally adjusted or appropriated towards any concluded acquisition transaction. Therefore, the mere description of the amount as an “Intercorporate Advance” does not, by itself, alter the nature of the transaction.

14. It is also significant that the Corporate Debtor's Board Resolution dated 01.10.2024 refers to availing unsecured loan from the Financial Creditor. Though the Corporate Debtor disputes the effect of the said resolution, the same constitutes contemporaneous evidence emanating from the Corporate Debtor itself. Further, while acquisition discussions between the parties are borne out from the record, no executed Share Purchase Agreement or other concluded document has been produced to establish that the amount of Rs. 2,25,00,000/- stood finally adjusted towards acquisition consideration. The material on record, therefore, indicates that the amount continued to remain outstanding.

15. The Corporate Debtor has further contended that the transaction does not carry interest and therefore cannot be treated as financial debt. At this stage, it is relevant to refer to the judgment of the Hon'ble Supreme Court in ***Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., Civil Appeal No. 2231 of 2021*** decided on **26.07.2021**, wherein the Hon'ble Supreme Court has observed as under:

“22. The NCLT and NCLAT have overlooked the words “if any” which could not have been intended to be otiose. ‘Financial debt’ means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt. Both NCLAT and NCLT have failed to notice clause(f) of Section 5(8), in terms whereof ‘financial debt’ includes any amount raised under any other transaction, having the commercial effect of borrowing.”



“29.Having regard to the Aims, Objects and Scheme of the IBC, there is no discernible reason, why a term loan to meet the financial requirements of a Corporate Debtor for its operation, which obviously has the commercial effect of borrowing, should be excluded from the purview of a financial debt.”

“31.The definition of ‘Financial Debt’ in Section 5(8) of IBC does not expressly exclude an interest free loan. ‘Financial Debt’ would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.”

16. In view of the aforesaid law laid down by the Hon'ble Supreme Court, the contention of the Corporate Debtor that the transaction cannot constitute financial debt merely because it was interest-free cannot be accepted. Section 5(8) itself employs the expression “interest, if any”. The material placed on record demonstrates disbursement of funds by the Financial Creditor, acknowledgment of the transaction in the audited financial statements of both parties, reflection of the amount as an outstanding liability in the books of the Corporate Debtor and absence of any concluded document evidencing final adjustment of the amount towards acquisition consideration. In the facts of the present case, the transaction has not been shown to have culminated into a completed acquisition arrangement and, therefore, is liable to be treated as a transaction having the commercial effect of borrowing within the meaning of Section 5(8)(f) of the Code. Consequently, the same falls within the ambit of financial debt under Section 5(8) of the Code.

17. As regards the objection raised by the Corporate Debtor to the claim of interest @ 12% per annum, it is seen that the Corporate Debtor has disputed the same on the ground that no contractual document stipulating payment of interest has been placed on record and that the Board Resolution relied upon by the Financial Creditor records the



transaction as being without interest. The Financial Creditor, however, has contended that the amount has been claimed only as default interest from the date of default and not from the date of disbursal. Be that as it may, for the purpose of admission of the present Application under Section 7 of the Code, it is not necessary to finally adjudicate upon the exact admissibility or quantum of interest claimed, since the principal amount of Rs. 2,25,00,000/- itself exceeds the threshold prescribed under Section 4 of the Code. The dispute relating to interest, therefore, does not affect the maintainability of the present Application.

18. The Corporate Debtor has relied upon *Rita Kapur v. Invest Care Real Estate LLP*, Company Appeal (AT) (Insolvency) No. 111 of 2020. However, the said judgment is distinguishable on facts. In *Rita Kapur*, the Hon'ble NCLAT held that once the debt is converted into capital, it cannot be termed as financial debt and the appellant cannot be described as financial creditor. In the present case, there is no concluded conversion of the amount into equity/capital. On the contrary, the record shows disbursal of money and reflection of the amount as an outstanding liability in the books of the Corporate Debtor. Therefore, the reliance placed by the Corporate Debtor on *Rita Kapur* does not advance its case.
19. As regards default, the Financial Creditor has stated that despite demand notice dated 25.01.2025, the Corporate Debtor failed to repay the amount and the date of default has been stated as 10.02.2025. It is further seen that as per Part IV of Form 1, the amount claimed to be in default is Rs. 2,44,38,082.19/-. The NeSL record also records default with date of default as 10.02.2025 and reflects an amount of Rs. 2,43,49,315.07/-. Though there is a variation between the amount reflected in Part IV of Form 1 and the NeSL record, both amounts are substantially above the threshold prescribed under Section 4 of the Code. Therefore, such variation does not affect the existence of debt, occurrence of default or the maintainability of the present Application. Accordingly, occurrence of default stands established.



20. The Corporate Debtor has also sought dismissal of the present Petition under Section 65 of the Code. The material relied upon by the Corporate Debtor primarily pertains to its defence that the transaction arose out of acquisition discussions and does not constitute financial debt. However, the said material does not establish that the present proceedings have been initiated fraudulently, maliciously or for any purpose other than insolvency resolution. It is further noticed that the Financial Creditor has filed an affidavit affirming that the present Petition has not been filed under any collusive arrangement with the Corporate Debtor. In the absence of any cogent material establishing fraud, collusion or malicious initiation of proceedings, the objection raised under Section 65 of the Code is rejected.

21. In view of the above discussions, this Adjudicating Authority is of the considered view that the Financial Creditor has successfully established the existence of financial debt and occurrence of default. The material placed on record demonstrates disbursement of Rs. 2,25,00,000/- by the Financial Creditor, acknowledgment of the transaction in the audited financial statements of both parties, recording of the amount as "Intercorporate Advance" in Note 15 to the audited financial statements of the Corporate Debtor, and existence of default as evidenced by the Information Utility record. The defence that the amount was advanced towards the proposed acquisition of the business of the Corporate Debtor and did not constitute a financial debt is not substantiated by any executed Share Purchase Agreement or other conclusive material evidencing final appropriation of the amount towards acquisition consideration. The objections relating to the claim of interest and the maintainability of the Petition under Section 65 of the Code are also found to be devoid of merit for the reasons recorded hereinabove.

22. Accordingly, this Adjudicating Authority is satisfied that the present Application fulfils the requirements of Section 7 of the Insolvency and Bankruptcy Code, 2016, that a financial debt exists and that default



has occurred. The Application is complete in all material particulars and there is no legal impediment to its admission. The present Application, therefore, deserves to be admitted.

23. In view of the foregoing, the Application bearing CP (IB) No. 655/ND/2025 filed by L H Sugar Factories Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 against Oswal Overseas Limited is admitted. It is hereby ordered as follows:

- i. The application bearing CP (IB) No. 655/ND/2025 filed by L H Sugar Factories Limited, the Financial Creditor, under Section 7 of the Code for initiating CIRP against Oswal Overseas Limited, the Corporate Debtor, is hereby admitted.
- ii. The Applicant has proposed the name of Mr. Mansij Arya, having Registration Number IBBI/IPA-002/IP-N00907/2019-2020/12939, email: pcsmansij@gmail.com, who is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. The consent of the proposed Interim Resolution Professional is taken on record. The IRP shall, within five working days from the date of pronouncement of this order, place on record a fresh disclosure regarding the validity of his Authority for Assignment (AFA) and pendency/non-pendency of disciplinary proceedings, if any.
- iii. We direct the Applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Mansij Arya, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount, however, shall be subject to adjustment by the Committee of Creditors, as accounted for by Interim



Resolution Professional, and shall be paid back to the Financial Creditor.

- iv. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor 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 corporate debtor.

(e) The IB Code 2016 also prohibits suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.



- v. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.
- vi. The Interim Resolution Professional shall perform all functions contemplated, inter alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- vii. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.
- viii. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the



Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- ix. A copy of the order shall be communicated to the Applicant/Financial Creditor, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order shall also be sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
- x. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing CP (IB) No. 655/ND/2025 stands **admitted**.

Sd/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

Sd/-

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