NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 103/2023
(IA Nos. 373, 374 & 801/2023 & 724/2025)

In the matter of :

A. KRISHNA REDDY,
Suspended Managing Director of
AKR Construction Limited
Plot No. 8-2-684/J4, 1st Floor, Bhavani Nagar Colony,
Kanakadurga Temple Lane, No. 12,
Banjara Hills, Hyderabad, Telangana-500034. **... APPELLANT**

V

SREI EQUIPMENT FINANCE LIMITED
Vishwakarma, 86C, Topsia Road,
Kolkata-700046, West Bengal **... RESPONDENT NO. 1**

AKR CONSTRUCTION LIMITED,
Represented by its interim Resolution Professional,
Mr. Rajesh Chillale,
Plot No. 8-2-684/J3, 1st Floor, Bhavani Nagar Colony,
Banjara Kanakadurga Hills, Temple Hyderabad Lane,
Telangana 500034 **... RESPONDENT NO. 2**

Present:

For Appellant	:	Mr. PH Arvindh Pandian, Senior Advocate Mr. Avinash Krishnan & Mr. Jerin Asher Sojan, Advocates
For Respondents	:	Mr. Anant Merathia, Ms. Poornima Devi, Mr. Rishi Srinivas, Mr. Surraj KM & Mr. Prahalad B, Advocates for R1 Mr. VVSN Raju & Mr. Srikant Rathi, Advocates for R2

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant before this Appellate Tribunal is the erstwhile Managing Director of the Corporate Debtor, M/s. AKR Construction Limited, which has been admitted into CIRP by the proceedings in CP(IB) No. 207/7/HDB/2022, initiated by the Financial Creditor, i.e., SREI Equipment Finance Limited, Respondent No. 1 herein. Respondent No. 1, who initiated the proceedings under Section 7 of the I & B Code, 2016, had sought commencement of the CIRP against the Corporate Debtor on the ground, as contended before the Ld. Adjudicating Authority, that they had extended certain financial assistance by way of credit facilities to the Corporate Debtor, allegedly amounting to Rs. 43,96,27,959/- under various facility and loan agreements, and pursuant to the same, various deeds were executed, including the deed of hypothecation, the certificate of registration of charge, the personal guarantee, and the loan agreement.

2. It was contended by the Financial Creditor that, on account of the Corporate Debtor's default in remitting the loan amount extended by the Financial Creditor, an amount of Rs. 277,77,89,288/-, as stated in the demand notice dated 29.03.2022, had become due and payable. Since the liability and apparent default arising from the said notice were not discharged by the Corporate

Debtor despite several demands, Respondent No. 1/Financial Creditor is said to have initiated proceedings by invoking Section 7 of the I & B Code, 2016.

3. In response, the Corporate Debtor filed an objection, disputing the very basis of the demand raised by the Financial Creditor. It was asserted that there existed various discrepancies and significant inconsistencies in the application filed under Section 7 of the I & B Code, 2016, for recovery of the amount allegedly due under the demand notice dated 29.03.2022.

4. The Appellant contended before the Ld. NCLT that the Financial Creditor had failed to demonstrate the authenticity of the amount claimed in the notice dated 29.03.2022. It was argued that no credible evidence had been produced to establish that the amount allegedly due had in fact been extended as financial assistance falling within the definition of "debt" under Section 7 of the I & B Code, 2016.

5. Another significant aspect, which will remain a point of contention when we address the issues in the present company appeal, concerns a peculiar argument raised by the Appellant. It was contended before the Ld. Adjudicating Authority that the alleged extension of credit facilities by the Financial Creditor could not be accepted as true in terms of the hypothecation deed and other

executed documents, such as the certificate of registration of charge and the personal guarantee loan agreement.

6. To take the demand raised by the Financial Creditor outside the ambit of "debt," the Corporate Debtor asserted that the so-called financial assistance was actually a facility extended exclusively for the purchase of vehicles, and not a loan. The Appellant contends that Respondent No. 1 had claimed that the following facilities were availed by the Corporate Debtor:

S.No.	***Agreement Details***	***Loan Amount***	***Date***	***List of Vehicles***
1	*171993*	*25,32,00,000/-*	*30.09.2018*	*127*
2	*2744, LAM062, HL0027604*	*1,53,82,165/-*	*22.06.2009*	*27*
3	*3831, LAM059, HL0027629*	*3,50,83,209/-*	*22.06.2009*	*9*
4	*4699, LAM060, HL0027605*	*4,87,65,775/-*	*22.06.2009*	*20*
5	*7982, LAM058, HL0027608*	*7,24,97,410/-*	*22.06.2009*	*10*
6	*7080, LAM061, HL0027606*	*1,46,99,400/-*	*22.06.2009*	*7*

7. The Appellant/Corporate Debtor further contended that, in fact, no disbursement of any amount was made under the loan agreements described in Columns 1 and 5 of the table. It was argued that, for Section 7 proceedings to be

maintainable, the Financial Creditor was required to establish the actual disbursement of a loan facility, something that could not be substantiated from the documents filed before the Ld. NCLT.

8. The Corporate Debtor also argued that the Financial Creditor failed to establish that any vehicle purchases were actually made out of the alleged financial assistance, or that any such amount had been defaulted, so as to justify initiation of proceedings under Section 7 of the I & B Code, 2016.

9. The Corporate Debtor additionally raised a vague plea that the proceedings under Section 7 suffered from misjoinder of cause of action, asserting that different claims arising from separate communications had been improperly clubbed together. It was argued that the application was ambiguous and failed to establish the existence of a debt, particularly due to inconsistency as to whether the alleged debt pertained to financial assistance for the Corporate Debtor's business or exclusively for the purchase of vehicles.

10. The Corporate Debtor further argued that, since different contracts were governed by different charges, consolidation of debts for recovery was impermissible, resulting in misjoinder of cause of action, and therefore the proceedings were illegal and unsustainable.

11. In contrast, the Financial Creditor maintained that financial assistance amounting to Rs. 43,96,27,959/- had indeed been extended to the Appellant, and that the Appellant had defaulted in repaying the same. The demand in the notice dated 29.03.2022 reflected the actual amount due. The Financial Creditor submitted the hypothecation deed containing the list of assets, the certificate of registration of charges filed before the Registrar of Companies, the personal guarantee agreement, and the statement of accounts of the Corporate Debtor, when read together, established the existence of a financial liability and the Corporate Debtor's default, thereby justifying initiation of Section 7 proceedings.

12. After considering the rival submissions, the Ld. Adjudicating Authority allowed the application under Section 7 and admitted the Corporate Debtor into the CIRP. It observed that the Financial Creditor had also filed an Independent Auditor's Report dated 17.12.2020 relating to the Corporate Debtor's accounts for the financial year ending 31.03.2020. The balance sheet reflected the existence of long-term borrowings, indicating a term loan availed from Respondent No. 1. This was corroborated by records submitted to CIBIL and a correspondence letter dated 16.06.2022 from the Corporate Debtor, which also indicated the existence of a financial transaction and a default, along with a request for OTS. The Ld. Tribunal thus held that the requirements under Section 7 were satisfied.

13. The Ld. Counsel for the Appellant argued that the correspondence dated 16.06.2022 could not be relied upon since its execution was denied by the Corporate Debtor. However, the fact remains that the communication, addressed to the Financial Creditor, acknowledged the availing of credit facilities and proposed a One Time Settlement for Rs. 350 Lakhs to be paid within 180 days. This amounted to an admission of debt and default by the Corporate Debtor.

14. Even assuming for the sake of argument that no financial assistance had been extended, there is no explanation for the issuance of the letter dated 16.06.2022 admitting liability and proposing a One Time Settlement, which itself indicates acknowledgment of debt. The Ld. Tribunal, when considering the issue of the existence of a debt, relied on the judgment in *Dena Bank (Now Bank of Baroda) v. C. Shivakumar Reddy*, decided on 04.08.2021 in Civil Appeal No. 1650 of 2020, which settled the principles for determining existing debt liability. For the purpose of brevity, para 118 is extracted hereunder: -

> *"**118**. In Pandam Tea Co. Ltd., In re [Pandam Tea Co. Ltd., In re, 1973 SCC OnLine Cal 93 : AIR 1974 Cal 170] , Sabyasachi Mukharji, J. held : (SCC OnLine Cal para 4)*
>
> *"4. Now the question is whether the statements, which are contained in the profits and loss accounts and the assets and liabilities side indicating the liability of the petitioning creditor along with the statement of the Directors made to the shareholders as Directors' report should be read together and if so whether reading these two statements together these*

amount to an acknowledgment as contemplated under Section 18 of the Limitation Act, 1963, or Section 19 of the Limitation Act, 1908. In my opinion, both these statements have to be read together. The balance sheet is meant to be presented and passed by the shareholders and is generally accompanied by the Directors' report to the shareholders. Therefore in understanding the balance sheets and in explaining the statements in the balance sheets, the balance sheets together with the Directors' report must be taken together to find out the true meaning and purport of the statements. The counsel appearing for petitioning creditor contended that under the statute the balance sheet was a separate document and as such if there was unequivocal acknowledgment on the balance sheet the statement of the Directors' report should not be taken into consideration. It is true the balance sheet is a statutory document and perhaps is a separate document but the balance sheet not confirmed or passed by the shareholders cannot be accepted as correct. Therefore, in order to validate the balance sheet, it must be duly passed by the shareholders at the appropriate meeting and in order to do so it must be accompanied by a report, if any, made by the Directors. Therefore, even though the balance sheet may be a separate document these two documents in the facts and circumstances of the case should be read together and should be construed together. It was held by the Supreme Court in Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd. [Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd., (1971) 1 SCC 67] , that it was clear that the statement on which the plea of acknowledgment was founded should relate to a subsisting liability as the section required and it should be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay for an acknowledgment did not create a new right of action but merely extended the period of limitation. The statement need not indicate the exact nature or the specific character of the *liability. The words used in the statement in question must, however, relate to a present subsisting liability and indicate the existence of a jural relationship between the parties such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not, however, be in express terms and could be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course did not mean that where a statement was made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and far-fetched reasoning. In order to find out the intention of the document by which acknowledgment was to be construed the document as a whole must be read and the intention of the parties must be found out from the total effect of the document read as a whole."*

15. In the summary of the judgment in *Dena Bank* (Supra), the Hon'ble Apex Court concluded that if an amount is reflected in the balance sheet of the Corporate Debtor as a long-term borrowing, as is the case here reflected in the Auditor's Report dated 07.12.2020, it would amount to an acknowledgment of debt within the meaning of Section 18 of the Limitation Act. While reinforcing this finding, the Ld. Tribunal held that the principle laid down in various judgments of the Hon'ble Apex Court and the Hon'ble Delhi High Court, particularly those referred to in Para 118 of the *Dena Bank* judgment (Supra), establishes that an acknowledgment of debt itself constitutes a liability to pay the outstanding amount when the same is reflected in the balance sheet, especially

when it is based on an independent Auditor's report, the propriety of which has not been denied by the Corporate Debtor in any proceedings.

16. Based on the aforesaid observations, the Ld. Tribunal held that the reflection of the outstanding debt in the balance sheet constitutes an admitted debt. To substantiate this, the Ld. Tribunal referred to the judgment in *M/s Innoventive Industries Limited v. ICICI Bank Limited*, (2018) 1 SCC 407, wherein, while answering two framed questions, it was concluded, by relying on the said judgment, that once the Corporate Debtor has committed a default, the Ld. Adjudicating Authority is required only to examine the records of the information utility or other evidence produced by the Financial Creditor to satisfy itself regarding the occurrence of default and the existence of debt. This holds so long as the debt is established as due and payable and is not barred by any law for the time being in force.

17. The Hon'ble Apex Court has repeatedly observed that, for the purpose of initiating CIRP proceedings, the Ld. Adjudicating Authority is expected to consider the grounds raised by the Corporate Debtor against admission both on their merits and based on the documents on record. The Ld. Adjudicating Authority also has discretion under Section 7(5)(a) of the I & B Code, 2016, to consider the objections raised by the Corporate Debtor against initiation of the CIRP. However, this exception under Section 7(5)(a) would not be required to be

invoked in the present appeal, particularly because the evidence on record, which are: (i) The Independent Auditor's Report dated 07.12.2020; (ii) The provisional balance sheet dated 31.03.2020, reflecting entries of loan liability; (iii) The correspondence dated 16.06.2022, issued by the Corporate Debtor, admitting the loan liability and acknowledging the availing of credit facilities; (iv) The offer of One-Time Settlement made by the Corporate Debtor to the Financial Creditor, which amounts to an admission of debt and liability, clearly establish the debt.

18. Furthermore, the subsequent communication placed before this Appellate Tribunal by the Respondent during the course of arguments i.e., the communication dated 19.07.2025 issued by the Appellant, wherein reference was made to earlier discussions with the Financial Creditor regarding a proposed One-Time Settlement and another OTS proposal, also serves as independent evidence of admission of debt, due to be paid.

19. This letter can therefore be regarded as a continuation of the Corporate Debtor's acknowledgment of liability, consistent with the earlier letter dated 16.06.2022. The relevant paragraph of the communication made by the Appellant himself on 19.07.2025 is extracted hereunder: -

> *"To,*
>
> ***SREI** Equipment Finance Limited,*
> *Y-10, EP-BLOCK, SECTOR V*

SALT LAKE
KOLKATA – 700 091

Dear Sir,

***Sub**: One time settlement – Reg. loan agreement No.123376 for Rs 5 Crore.*

***Ref**: Discussions took between Mr. A. Krishna Reddy & Mr. Anupam Jain CEO of SREI Equipment Finance Ltd during 29th May 2025 at SREI office Chambers, Hyderabad.*

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*As the prevailing situation was worsening during the year 2020, as a priority AKRCL had started discussions with SREI for one time settlement for an amount of **Rs.2.50cr**. The OTS amount was mutually arrived **at** after several **rounds of** discussions between **officials of** AKRCL and SREI Equipment Finance Limited. **We** were appraised by SREI that the recommendations for OTS were also submitted to the SREI Board for **its consideration and** approval. Since then AKRCL have been waiting for sanction of OTS **to put an end to the financial disputes**. AKRCL was surprised to receive various notices from SREI inspite of the OTS proposal **which** is kept pending with SREI Equipment Finance Board. Again during the period 2022 after discussing with your officials, we have submitted our **revised** OTS offer to Rs.3.50Cr but **there has been** no response from your side."*

20. When the proceedings were taken up for final adjudication, the Ld. Counsel for the Appellant, in support of his contention, drew a peculiar distinction before

this Appellate Tribunal with respect to the observations made in Para IV of the impugned order. The observation stated that "the Rejoinder of the Financial Creditor was not taken on record, as the same was filed without the leave of the Ld. Adjudicating Authority." What he intended to argue was that, once the Rejoinder was not permitted to be taken on record, all documents filed in support of the Rejoinder, including the copy of the balance sheet, the minutes of the One-Time Settlement proposal, and the correspondence dated 16.06.2022, should not have been treated as evidence.

21. As far as the argument advanced by the Ld. Counsel for the Appellant in this regard is concerned, the same is not acceptable to this Appellate Tribunal. This is because, under the procedural framework of the NCLT Rules, 2016, the term *pleading* is defined under Rule 2(19), which reads as follows:

> *"2(19) "**pleadings**" means and includes application including interlocutory application, petition, appeal, revision, reply, **rejoinder**, statement, counter claim, additional statement supplementing the original application and reply statement under these rules and as may be permitted by the Tribunal;"*

22. The term *pleading* therefore includes the categories of documents expressly mentioned therein, including a Rejoinder. If that is the case, and the Rejoinder forms part of the pleadings as defined under Rule 2(19), then no formal permission is required from the Ld. Adjudicating Authority to place documents

on record along with the Rejoinder affidavit, particularly when the statute does not impose any express bar on filing additional documents with a Rejoinder. Accordingly, there can be no prohibition on considering such documents filed with the Rejoinder for the purpose of rebutting the objections raised to the proceedings under Section 7 of the I & B Code, 2016. This is especially so when the Appellant did not controvert the contents of these documents, except to argue that they are not be considered since they were allegedly not taken on record, an argument already addressed by this Tribunal.

23. Rule 2(19) of the NCLT Rules, 2016, is broad enough to include within its scope the Rejoinder and the three accompanying documents referred to above, and these may therefore be read for adjudication of the *lis* on its merits. This is particularly true in the absence of any legal bar preventing such documents from being read in evidence, given that they form part of the pleadings and their contents have not been denied.

24. Moreover, when the Ld. Counsel for the Appellant restricts his argument to the alleged absence of leave for filing the Rejoinder, it is notable that he has failed to establish, either through legal authority or judicial precedent, that any such formal permission is required to place these documents on record. The attempt to exclude these documents from consideration, despite implicitly admitting their contents, undermines the Appellant's own defence, revealing an

effort to avoid scrutiny of the materials that substantiate the Financial Creditor's case.

25. Further, once the Rejoinder falls within the definition of *pleading* under Rule 2(19) of the NCLT Rules, 2016, and forms part of the pleadings, it may be accepted and read in evidence for resolving the controversy. Procedural law should not create unnecessary obstacles to the consideration of pleadings or supporting documents necessary for effective adjudication.

26. This argument raised by the Ld. Counsel for the Appellant relates to the three documents annexed with the Rejoinder affidavit, i.e., the balance sheet, the Auditor's Report, and the One-Time Settlement proposal, including the correspondence dated 16.06.2022. It is clarified that the balance sheet and the Auditor's Report fall within the category of public documents under Section 74 of the *Bharatiya Sakshya Adhinayam, 2023*, and may therefore be considered for determining the controversy and facilitating the decision-making process.

27. This issue may also be examined from another perspective. The Appellant contends that the correspondence dated 16.06.2022 was never issued and is a fraudulent document that cannot be relied upon. This contention is self-contradictory, as the correspondence was allegedly issued under the signature of the Appellant himself, Mr. A. Krishna Reddy. If the Appellant asserts that the

document is not genuine, the burden of proof under Section 104 of the *Bharatiya Sakshya Adhinayam, 2023*, shifts to him to establish that the correspondence was not executed. No such attempt was made by the Appellant to discharge this burden, thereby reinforcing the inference of admission of debt reflected in the demand notice dated 29.03.2022.

28. The letter dated 16.06.2022 may also be interpreted from yet another viewpoint. Once the Appellant acknowledges steps taken towards a One-Time Settlement proposal, the following natural inferences arise:

i. It is an admission of debt.

ii. It is an offer to settle an admitted liability.

iii. The correspondence dated 19.07.2025, being in continuation of the One-Time Settlement proposal dated 16.06.2022, which was annexed with the Rejoinder, creates a presumption that the Appellant admitted the debt, acknowledged its existence in the letter dated 16.06.2022, and reaffirmed this admission through the subsequent correspondence dated 19.07.2025, which was issued after the impugned order dated 23.03.2023.

29. In light of the illustrations under Section 104 of the *Bharatiya Sakshya Adhinayam, 2023*, once a person seeks to benefit from a document, either by

asserting its execution or denying it, the burden of proof lies upon him to establish the contrary. The Financial Creditor is not required to prove a negative, particularly when the Appellant's documents are consistent with subsequent communications executed by him.

30. The Ld. Counsel for the Appellant has referred to the copy of the Rejoinder filed along with the memorandum of appeal in Volume III, containing the Auditor's Report, the balance sheet, and the letter dated 16.06.2022, an issue already addressed by this Tribunal. Since these documents and the Rejoinder form part of the pleadings, no formal permission was required from the Ld. Tribunal for them to be considered. If the Appellant sought to argue otherwise, the burden of proof rested upon him, a burden he completely failed to discharge.

31. Even assuming, for the sake of argument, that the documents filed with the Rejoinder were not formally taken on record by the Ld. Adjudicating Authority as per Para IV of the impugned order, a statutory appeal lies under Section 61 of the I & B Code, 2016, against an order passed by the Ld. Adjudicating Authority.

32. It is a settled principle of law that the first appellate forum constituted under the statute is empowered to examine both the propriety and legality of the order impugned, by appreciating both facts and law. Proceedings before the Appellate Tribunal are a continuation of the original proceedings, and therefore the

Appellate Forum may consider the facts, law, and evidence already on record. This principle is supported by the judgment of the Hon'ble Apex Court in *Malluru Mallappa (Dead) Through Legal Representatives v. Kuruvathappa & Others*, Civil Appeal No. 1485 of 2020, wherein in Para 14 it was held that an appeal constitutes a continuation of the original proceedings. The relevant observation which has been made by the Hon'ble Apex Court is extracted hereunder: -

> *"14. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for re-consideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its finding only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions [see:* ***Santosh Hazari V. Purushottam Tiwari (Deceased) By Lrs., Madhukar and others V. Sangram and Others, B. M. Narayana Gowda V. Shanthamma (Dead) By Lrs. and Another, H. K. N. Swami V. Irshad Basith (Dead) By Lrs. and M/s. Sri Raja Lakshmi Dyeing Works V. Rangaswamy Chettiar****]."*

33. If that be the situation, even if we remotely presume that the Rejoinder required formal acceptance by the Ld. Adjudicating Authority to be taken on

record, or that the documents annexed thereto were required to be considered only after such formal approval, nothing in law precludes the Appellate Forum, being a continuation of the proceedings of the original court, from considering documents already on record, since the Appellate Court is the first superior court of fact and law before which the matter is open to scrutiny.

34. Hence, we too have exercised our powers to examine the Rejoinder affidavit and the documents annexed thereto, and we are of the considered view that the Auditor's Report and the provisional balance sheet indeed reflect the relevant balances. Since these are public documents, and upon being satisfied as to their authenticity, we have proceeded to consider them on merits. It is a settled position of law that once an amount is reflected in the balance sheet, it is presumed to be an amount due and payable by the Corporate Debtor to the Financial Creditor.

35. The Ld. Counsel for the Appellant submitted that they had specifically taken this stand, regarding the reading of the Rejoinder affidavit and the supporting documents, in the written submissions filed before the Ld. NCLT. We find it appropriate to clarify that oral and written submissions do not constitute pleadings. They are merely an elaboration of arguments already advanced before the judicial forum and serve only to assist the court in adjudication. Matters raised

in written submissions do not fall within the definition of pleadings under Rule 2(19) of the NCLT Rules, 2016.

36. Hence, even if the assertions made in the written submissions are relied upon by the Ld. Counsel for the Appellant, the contention that a formal permission was required to place the Rejoinder or new documents on record cannot be accepted, for the reasons already discussed above.

37. In the conduct of proceedings before the Ld. NCLT, the Appellant, in the Counter Affidavit filed in reply to the application under Section 7 of the I & B Code, 2016, had raised an objection in Para 8 stating that unnecessary demands were being raised by the Financial Creditor from time to time without verifying the actual amount due. However, it is the Appellant's own case that they never denied receiving the said demand notice alleged to have been issued. Relevant Para 8 of the Counter Affidavit is extracted below:

> *"**8**. It is not out of the record to state that the Applicant is habituated to claim as per its whims and fancies without any corroboration of claim and used to send different demands of payment, contra to one another and upon this Respondent's challenge the Applicant used to take time to ascertain the information from their records and never used to revert back."*

38. The Ld. Counsel for the Appellant further argued that the entire loan transaction was tainted with fraud, and specifically questioned the signature

appearing on the agreement dated 22.06.2009 appended with the memorandum of appeal. Referring to the Appellant's signature on this document, he contended that it does not correspond with the Appellant's signatures appearing on various other documents, including the letter dated 16.06.2022.

39. In fact, if the Appellant doubted the authenticity of the signatures appearing on the relevant documents forming the foundation of the loan transaction, it was incumbent upon him, being the one alleging fraud, to take steps to verify the same. No effort was made to deny the contents of the documents or to obtain expert verification regarding whether the said communication was ever signed by him, despite alleging fraud.

40. It is settled law that where a party alleges fraud in judicial proceedings, the burden of proof lies on the party raising such plea, as such a plea benefits the party asserting it. In the present case, the Appellant has made no attempt whatsoever to discharge this burden or to establish that the documents were obtained through fraudulent means.

41. More importantly, during the proceedings before the Ld. Adjudicating Authority, when the Section 7 application under the I & B Code was under consideration, the Ld. Authority framed a specific question to be examined for

determining the matter. The questions which were framed by the Ld. Tribunal are extracted hereunder: -

> "***VII***. *In the light of the aforestated contentions, the point that emerged for our due consideration is:*
>
> - *Whether a financial debt as claimed by the financial creditor is due and payable by the corporate debtor, if so, whether the corporate debtor defaulted in payment of the same?"*

42. In fact, if the way in which these two questions were sought to be answered by the Appellant are considered, it clearly demonstrates that the Appellant never attempted to pursue or establish the allegation of fraud through appreciation of evidence. Having failed to act upon his own rights, he cannot later resile from the stand already taken and adopt a contradictory position at the appellate stage by contending that the documents evidencing the financial liabilities of the Corporate Debtor were fraudulently executed, particularly when no proof to the contrary has been produced. Merely alleging that a document is fraudulent does not suffice for the adjudication of a dispute. Fraud is a fact that must be established by evidence, which the Appellant has failed to do, and hence he cannot take advantage of such a plea, especially while objecting to documents such as the Audit Report, the Balance Sheet, and his own One-Time Settlement proposals contained in the correspondence dated 16.06.2022 and 19.07.2025. In fact, a summary consideration of these documents clearly indicates a tacit

admission by the Appellant of his financial liability, because unless such liability existed and was admitted, there would have been no occasion for him to explore the possibility of a One-Time Settlement. An attempt to enter into a One-Time Settlement constitutes an admission of financial debt payable to the Financial Creditor.

43. In elaboration of what has already been observed above, the Ld. Counsel for the Respondent drew our attention to the entries made in the balance sheet for the financial year ending 31.03.2020. If the balance sheet entries are taken into consideration, apart from the fact that they are public documents, Note No. 3 clearly shows long-term borrowings and the outstanding balance due, as reflected in the third and fourth columns of the balance sheet contained in Volume III, page 496, of the Memorandum of Appeal. The relevant entries referred to above are extracted hereunder: –

Name of the Company: AKR Construction Limited ***Note No.2 Reserves and Surplus***		
Reserves & Surplus	***As at 31 March 2020***	***As at 31 March 2019***
	Rs.	***Rs.***
A. Surplus *Opening balance* *(+) Net Profit/(Net Loss) For the current year* *(+) Transfer from Reserves* *(-) Tax Arears adj.from AKR Coastal (JV)* *(-) Tax arears paid*	*252,151,471* *-57,399,446*	*250,033,473* *2,117,998*
Closing Balance	*19,47,52,026*	*25,21,51,471*
Total	*19,47,52,026*	*25,21,51,471*

Note No.3 Long term Borrowings		
Long term Borrowings	***As at 31 March 2020***	***As at 31 March 2019***
	Rs.	***Rs.***
Secured	*1,792,016*	*1,792,016*
(a) Term Loans	*180,173*	*180,173*
Shri ram Transnr: finance	*146,107,770*	*146,107,770*
HDFC BANK TERM LOANS	*4,443,659*	*4,443659*
Srei infrastructure term loans	*116,135*	*116,135*
BOB -Car Loans		
Vimal Credit Corporate ltd		
The all the above loans became NPAs		
a) Sub Total	*15,26,39,753*	*15,26,39,753*
(b) Mobilisation Advances From Customers *(The Mobilisation advance is Guaranteed by Terms of Repayment* ***(Terms of repayment:*** *Deduction From Work bills)*	*7,78,76,147*	*8,58,99,770*
Sub-Total	***23,05,15,900***	***23,85,39,523***
Unsecured ***(a) Loans and advances from related parties***	***20,28,81,967***	***14,71,67,754***
Sub-Total	***20,28,81,967***	***14,71,67,754***
Grand Total	*43,33,97,867*	*38,57,07,277*

44. The Ld. Counsel for Respondent No. 1 broadly submitted that acknowledgment of liability can be clearly inferred from the amount reflected in the balance sheet, and such acknowledgment may be determined on the basis of the ratio laid down in the judgment reported as MANU/SC/0279/2021, *Asset Reconstruction Company (India) v. Bishal Jaiswal*, wherein the Hon'ble Apex Court observed that entries reflected in the balance sheet constitute an admission of debt, falling within the ambit of Section 18 of the Limitation Act.Apart from this, the Ld. Counsel for the Appellant submitted that, as far as the quantum of debt and default is concerned, the Hon'ble Apex Court in *Rajesh Kedia, Ex-*

Director v. Phoenix ARC Private Limited and Others, MANU/NL/0228/2022, in Para 12, has held that the precise quantification of the amount to be recovered under Section 7 of the I & B Code, 2016, is immaterial, even if the amount is disputed. Relevant para 12 of Rajesh Kedia (Supra) is extracted hereunder: -

> *"**12**. Now we address to the contention of the Learned Counsel for the Appellant that interest does not appear in the Balance Sheet and that the dues ought to be ₹ 7,77,00,00,000/- and not ₹ 96,00,00,000/- and that the 'Corporate Debtor' is being forced into IBC on account of the highly inflated claims raised by the 'Financial Creditors'. It is the contention of the Appellant that the debt amount is not the amount as shown in the form. However, on mere dispute of the quantum of the amount, the Application under Section 7 cannot be rejected. The Hon'ble Supreme Court in 'M/s. Innoventive Industries Ltd.' Vs. 'ICICI & Anr.', (2018) 1 SCC 407, observed the definition of 'Claim' and held that even if right of payment is disputed, the Code gets triggered the moment, the default exceeds the threshold amount. At this juncture, it is relevant to reproduce paras 27, 28 & 30 of the 'M/s. Innoventive Industries Ltd.' (Supra) wherein the Hon'ble Supreme Court has observed as follows:*
>
> > *"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide Company Appeal (AT) (Insolvency) No. 996 of 2021 terms as meaning non-payment of a debt once it becomes due and payable, which includes non- payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the*

Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Company Appeal (AT) (Insolvency) No. 996 of 2021 Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor.

……………………………………………………………………………………….....

<u>30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise</u>."

(Emphasis Supplied)

45. What is relevant is that, as per the dictum of the Hon'ble Apex Court rendered in *M/s Innoventive Industries Limited v. ICICI Bank Limited*, it has been held that the definition of a 'claim' includes even a disputed right of payment, and that proceedings under the Code are triggered the moment the default exceeds the statutory threshold limit. For this purpose, reference has been made to Paras 27, 28, and 30 of the judgment in *M/s Innoventive Industries Limited v. ICICI Bank Limited & Anr.* (These paragraphs are not reproduced here to avoid unnecessary length.)

46. Even otherwise, if the aforesaid principle as applied by the Ld. NCLT is considered in its entirety, the basic criterion is that only the existence of a claim is required to be prima facie established. Its quantification does not affect the maintainability of proceedings under Section 7 of the I & B Code, 2016; quantification becomes relevant only at a later stage, when the matter is adjudicated on its merits.

47. This principle is reiterated in Para 30 of the judgment in ***M/s Innoventive Industries Limited v. ICICI Bank Limited*, *reported in (2018) 1 SCC 407***, extracted below:

> *"**30**. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the*

financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

48. In view of the aforesaid facts and reasons, the only questions pressed by the Appellant are as follows:

i. That the Rejoinder cannot be taken on record.

ii. That the documents filed with the Rejoinder cannot be read in evidence.

49. These questions have already been answered against the Appellant for the reasons assigned above. Since a Rejoinder forms part of the pleadings, it is open to consideration by the Ld. Tribunal while deciding the case on merits, and no formal permission is required from the Ld. Adjudicating Authority prior to placing the Rejoinder on record to be read in evidence. Moreover, the documents filed with the Rejoinder, being public documents such as the Auditor's Report and the balance sheet, are already in the public domain and clearly reflect the existence of a debt due from the Appellant to the Financial Creditor. Furthermore, the Appellant's liability stands explicitly admitted in the communication dated 16.06.2022, as well as in his subsequent efforts to pursue a One-Time Settlement

on 19.07.2025. A proposal for One-Time Settlement itself constitutes an admission of debt, once the Appellant initiates steps to settle the liability through payment.

50. Owing to the above, the 'Company Appeal' lacks 'merit' and the same is accordingly 'dismissed'. All the pending 'Interlocutory Applications' would stand 'closed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

13/11/2025
SN/MS/AK