

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**  
**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) (Ins) No. 557/2025**  
**IA No. 1578/2025**

**In the matter of:**

**N. K. KURIAN,**  
the Suspended Director of  
Mangomeadows Agriculture Pleasure  
Land Private Limited., residing at  
Building No. XV/175A, Ayamkudy PO,  
Kaduthuruthy, Kottayam- 686613.

**....APPELLANT**

**V**

**K. EASWARA PILLAI,**  
Resolution Professional of Mangomeadows Agriculture  
Pleasure Land Private Limited,  
6th Floor, Amrita Trade Towers, S A Road,  
Pallimukku, Kochi- 682016

**....RESPONDENT NO.1**

**KOSAMATTAM FINANCE LIMITED,**  
Kosamattam Mathew K. Cherian Buildings,  
Market Junction, Kottayam- 686001.

**....RESPONDENT NO.2**

**Present :**

For Appellant : Mr. E. Om Prakash, Senior Advocate  
For Mr. Ashwin Shanbhag, Advocate

**JUDGMENT**  
**(Hybrid Mode)**

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

The Appellant, who happens to be the Suspended Managing Director of M/s. Mango Meadows Agricultural Pleasure Land Private Limited (hereinafter to be called as the Corporate Debtor), is said to have established the world's first man-made agricultural theme park, which he proclaims to have been recognized by the Limca Book of Indian records, which featured biodiversity from 45

countries & ecosystem, which were replicating the natural habitats along with the depiction of Indian civilization, customs and art. It is for the said project, the Appellant, the Corporate Debtor, had approached the Respondent No. 2 (Kosamattam Finance Limited) for availing the financial assistance in the year 2016, for the purpose of the establishment and augmentation of, the aforesaid project of the agricultural theme park.

2. It is the case of the Appellant that, consequent to his approach, Respondent No. 2, is said to have sanctioned the financial assistance in the shape of a loan of Rs. 8 crores to the Corporate Debtor, on which the interest, was payable at 19% per annum, at a monthly rest, vide the sanction letter of Respondent No. 2 dated 24.02.2016. A loan agreement was executed between the parties on 01.03.2016, thereby settling the terms, that would be governing the loan sanctioned by the Respondent No. 2.

3. The Appellant had developed a case, that owing to the various external factors such as rampant flood of 2018 and 19, Nipah Virus outbreaks and the COVID-19 pandemic, which had resulted into a countrywide lockdown, the said project of an agricultural theme park received a setback in form of substantial reduction in daily footfall as a result of which the revenues fell drastically and the project incurred heavy losses, due to which the Appellant was unable to fulfil his loan obligations as per the terms of the agreement to loan of 01.03.2016.

4. It is based upon the said default, which has befallen as a consequence of the loan agreement of 01.03.2016, the Respondent No. 2 is shown to have filed an application under Section 7 of the I & B Code, before the Ld. Adjudicating Authority, which was numbered as CP (IB)/06/KOB/2022, praying for commencement of the CIRP proceedings as against the Appellant, the Corporate Debtor.

5. The fact which stands admitted, is that, during the pendency of the said company petition, which was instituted, before the Ld. Adjudicating Authority, the Appellant had approached the writ court by invoking the provisions contained under Article 226 of the Constitution of India, by filing of a writ petition before Hon'ble High Court of Kerala, seeking a relief of a writ of mandamus which was in the nature of declaration, that Section 7 proceedings as drawn under the I & B Code, 2016, and the form appended thereto alleging the default, which is the basis of the proceeding under Section 7 of the I & B Code, 2016, are unconstitutional, on the ground that, there was no power conferred on the Ld. Adjudicating Authority to adjudicate upon the issue, which arises and were incidental consequences of the proceedings under Section 7 of I & B Code, 2016.

6. The Hon'ble High Court of Kerala took up the aforesaid writ petition, being **Writ Petition No. 7444 of 2022**, in the matter of M/s. Mango Meadows Agricultural Pleasure Land Private Limited v. Union of India and others, and the same was adjudicated upon by the Ld. Single Judge of the Hon'ble High Court of

Kerala, vide its judgment of 10.08.2022. The Hon'ble High Court had rejected the challenge given by the Appellant to the constitutionality of Section 7 of the I & B Code, 2016.

7. The Hon'ble High Court had also observed, that the Appellant could avail his opportunity of filing of an objection against the proceeding under Section 7 of the I & B Code, 2016, before the Ld. Adjudicating Authority and directed that, Ld. Adjudicating Authority is bound to consider the objection on merits. The directions as given by the Ld. Single Judge of the Hon'ble High Court of Kerala, had made the following observation: -

*“It is hence clear that the petitioner has the right to file objections against Ext.P7 application and in such event, the adjudicating authority is bound to consider the objection on merits and take a decision on the admissibility or otherwise of Ext.P7 application after considering all relevant aspects, including those urged in this writ petition.”*

8. In response to the directions given by the judgment rendered by the Hon'ble High Court of Kerala on 10.08.2022, advising the Appellant to approach the Ld. Adjudicating Authority to air his grievances by way of filing an objection to the proceedings under Section 7 of the I & B Code, 2016, the Appellant had preferred an application under Section 65 of the I & B Code, 2016, which was numbered as IA(IBC)285/KOB/2022. In the said application, preferred under Section 65 of the I & B Code, 2016, the Appellant had once again sought a relief of declaration that, the CIRP of the Corporate Debtor, as initiated by Respondent No. 2, i.e., CP(IB)

No. 6/2022 is fraudulent and with the malicious intention for the purposes other than for the resolution of the insolvency of the Corporate Debtor.

9. The relief, which was modulated by the Appellant in his application preferred under Section 65 of the I & B Code, 2016, the Appellant had prayed for declaring the proceedings of the CP (IB) No. 6/2022 carried under Section 7 of the I & B Code, 2016, as to be malicious proceedings and levying a penalty in the exercise of the powers under Section 65 of the I & B Code, 2016. The said application, which, was preferred by the Appellant on 26.09.2022, was considered by the Ld. Tribunal, and after much deliberations made upon it, Ld. Tribunal passed an order on 25.01.2023, dismissing the application, under Section 65 of the I & B Code, 2016, and admitted the Corporate Debtor into the CIRP proceedings. The company petition CP(IB)/06/KOB/2022, as preferred by Respondent No. 2, was herein allowed on the ground that there exists a debt and default, which are the prime ingredients that, have to be satisfied for the purposes of commencement of the proceedings under Section 7 of the I & B Code, 2016, and the Ld. Tribunal, vide its order of 25.01.2023, after observing that the same stood satisfied, admitted the Corporate Debtor into CIRP.

10. The Ld. Tribunal, while passing the order on 25.01.2023, had observed that, owing to the assessment of the records, which were placed before it, the loan amount of the Financial Creditor, and the default committed in the repayment of the same, as per the terms of the loan agreement, stood established, and because

of the fact that the existence of a debt and default was reasonably established by the Financial Creditor. Accordingly IA(IBC)285/KOB/2022, as preferred by the Appellant, was dismissed, holding it to be devoid of merits, and CP (IB)/6/KOB/2022, filed by the Financial Creditor was allowed and the Corporate Debtor, M/s. Mango Meadows Agricultural Pleasure Land Private Limited, was admitted into CIRP proceedings. The relevant observations made by the Ld. Tribunal was contained in para 16 and 17 of the order dated 25.01.2023, which are extracted hereunder: -

*16. The Corporate Debtor committed a default in repayment of the loan amount to the Financial Creditor, and hence its Loan Account was declared as NPA. In the light of the above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of an application under Section 7(4) of the I&B Code. Hence, the contention of the Corporate Debtor in IA(IBC)/285/KOB/2022 and the reply statement filed in the Company Petition, we are of the considered opinion that the technical objection was raised through IA(IBC)/285/KOB/2022 only for the sake of objecting, which cannot be accepted. In view of what is stated above, we do not find any merit in **IA(IBC)/285/KOB/2022** which is **Dismissed** as devoid of merit.*

*17. Coming to CP(IB)/06/KOB/2022, we are of the considered view that the application filed in the capacity as a 'Financial Creditor' for a 'financial debt' which is recoverable from the Corporate Debtor viz., **M/s. Mangomeadows Agricultural Pleasure Land (P) Limited** is a fit case for admission and initiation of CIRP against the Corporate Debtor. The documents produced on record prove the disbursement of various loan facilities by the Financial*

*Creditor to the Corporate Debtor and the failure to repay the loan.*

11. What is agonizing for this Appellate Tribunal, is that, though the Appellant had challenged the proceedings under Section 7 of the I & B Code, 2016, by way of filing of a writ petition in which he was given the liberty to file an objection to the company petition before the Ld. NCLT, the Appellant had chosen to file the application IA(IBC)/285/KOB/2022 under Section 65 of the I & B Code, 2016, instead of challenging the proceedings under Section 7 of the I & B Code, 2016, in CP(IB)/06/KOB/2022.

12. Moreover, he has concealed certain important factors which may have significant impact on the instant appeal, which is narrated below. In the memorandum of appeal thus preferred by the Appellant, the Appellant has made the following pleading:

*7.8 It is pertinent to note that 'no appeal' was filed challenging the order dated 25.01.2023 and consequently the order has attained finality. It is clarified that the instant appeal is not filed challenging the legal validity of the order dated 25.01.2023 passed by the Adjudicating Authority.*

13. In the pleading thus raised above, the Appellant has specifically pleaded, that '**no appeal**' has been filed, by the Appellant challenging the order of 25.01.2023 and had submitted that the order dated 25.01.2023 has **attained finality**. Further, it was pleaded by the Appellant, that the present company appeal is not filed challenging the legal validity of the order of 25.01.2023 passed by the Ld. Adjudicating Authority, appointing Respondent No. 1, Mr. Easwara Pillai

Kesawan Nair as an IRP, or the proceedings of the public announcement in the shape of Form A, as it was resorted to by Respondent No. 1 on 29.01.2023, initiating the public announcement for initiation of the CIRP process of the Corporate Debtor, inviting claims from the creditors, and stakeholders of the Corporate Debtor as under Rule 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In para 7.8 the Appellant had falsely made a categorical statement that, as against the order dated 25.01.2023, no appeal has been preferred and the same has attained finality. But in reality a company appeal being, **Company Appeal (AT) (CH) (Ins) No. 88/2023**, was preferred by none other than the present Appellant himself, Mr. N. K. Kurian, challenging the order of Ld. NCLT dated 25.01.2023, which was dismissed by this Appellate Tribunal, by judgement dated 13.04.2023.

14. Since, the Company Appeal (AT) (CH) (Ins) No. 88/2023, was preferred by the present Appellant, he certainly had the knowledge of the order dated 13.04.2023, dismissing his company appeal and confirming the dismissal of the application under Section 65 of the I & B Code, 2016, by an order of 25.01.2023, as well as allowing of the petition, under Section 7 of the I & B Code, 2016. But for the reasons best known to the Appellant, in the entire memorandum of appeal or any of the pleadings raised by the Appellant in the instant company appeal, as it was presented before the Registry of this Appellate Tribunal, the Appellant has not made even a single mention to the effect that, he had preferred a company



appeal, as against the order of 25.01.2023, and that has been dismissed on 13.04.2023. Rather to the contrary, he just makes a converse pleading in para 7.8 of the Memorandum of Appeal, that he has not preferred any company appeal and the order of 25.01.2023 has attained finality. This will amount to be a deliberate concealment of material fact, at the hands of the Appellant by not bringing to the knowledge of this Appellate Tribunal, about the fact of the Appellant preferring an appeal earlier and the same having been dismissed by this Appellate Tribunal.

15. What is more surprising is that, by the time this company appeal was presented before this Appellate Tribunal i.e., on 17.10.2025, the factum of passing of the judgement of 13.04.2023 in Company Appeal (AT) (CH) (Ins) No. 88/2023, was not disclosed, and that by adopting the procedure which is unknown in the eyes of law, the Appellant endeavoured to file an additional type set in shape of a memorandum without the prior leave of this Appellate Tribunal, annexing therewith the order of dismissal dated 13.04.2023 by placing the same for the first time before this Appellate Tribunal, even in the absence of there being any pleading in the memorandum of appeal to that effect.

16. The said memorandum taken on record in this company appeal to be considered on merits for the following reasons:

- (i) It is not a procedure, which is reckoned in the eyes of law.
- (ii) It is not a mode legally prescribed for either placing the additional pleading or an additional document in a company appeal.

- (iii) The said additional typeset couldn't have been taken on record because the same was presented only on the very first date when the company appeal was being heard as fresh, during the course of proceedings, in the Court.
- (iv) This additional typeset of papers couldn't have been filed before this Appellate Tribunal, except with a prior leave of this Appellate Tribunal. Obviously, when it was presented on the day when the company appeal itself was being argued as fresh, and there was no prior permission.
- (v) Copy of this memo was not mailed to Respondents along with the other records of the company appeal.
- (vi) Any document which is being presented in a proceedings in a manner not known in the eyes of law cannot be read, for the purposes of deciding a dispute before a court of law or for making any reference during arguments especially when there is no pleading raised in the company appeal as preferred by the Appellant, in respect of such document.

17. In fact, this conduct of the Appellant of being unfair to this Appellate Tribunal by making a deliberate concealment of a material facts, such as the proceedings of CA(AT)(CH)(INS) No. 88/2023 which has a significant bearing on the proceedings, would disentitles him to be even heard before this Appellate

Tribunal, apart from the aspect of imposition of a heavy cost, for deliberately misleading this Appellate Tribunal by concealing facts.

18. It may be noted that in the light of the judgement as rendered by the ***Hon'ble Apex Court as reported in 2008, volume 12 SCC page 481 K.D. Sharma v. Steel Authority of India Ltd. & Ors.***, it is settled law that a person who doesn't approach the court with clean hands and who deliberately knowing the facts intends to do a jugglery or manipulate, or manoeuvre or misrepresent them, has got no place in the court proceedings. Further, if the Appellant doesn't disclose all the material facts or he distorts the facts in order to mislead the court, the courts have got a right to reject the proceedings at its inception and not to hear such a litigant who is not fair to the Court/Ld. Tribunal.

19. The aforesaid observation, has been made by the Hon'ble Apex Court, in para 49, 50, 51 & 52 of the said judgment, which is extracted hereunder: -

***49. "Strongly disapproving" the explanation put forth by the petitioner and describing the tactics adopted by the Federation as "abuse of process of court", this Court observed: (All India State Bank Officers Federation case [1990 Supp SCC 336 : 1991 SCC (L&S) 429 : (1991) 16 ATC 454] , SCC pp. 340-41, paras 9 & 11)***

***"9. ... There is no doubt left in our minds that the petitioner has **not only suppressed material facts in the petition but has also tried to abuse judicial process.** ...***

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***11. Apart from misstatements in the affidavits filed before this Court, the petitioner Federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf***

of different associations of the officers of the Bank, is a practice which has to be discouraged. Sri Sachar and Sri Ramamurthi wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a single court. It seems the object here in filing different petitions in different courts was a totally different and not very laudable one.”

50. “Deeply grieved” by the situation and adversely commenting on the conduct and behaviour of the responsible officers of a premier bank of the country, the Court observed: (All India State Bank Officers Federation case [1990 Supp SCC 336 : 1991 SCC (L&S) 429 : (1991) 16 ATC 454] , SCC p. 342, para 12)

“12. We have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by keeping away material facts from the court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate misstatements. We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this case and hope that this will be a lesson to the present petitioner as well as to other litigants and that at least in future people will act more truthfully and with a greater sense of responsibility.”

51. Yet in another case in *Vijay Syal v. State of Punjab* [(2003) 9 SCC 401 : 2003 SCC (L&S) 1112] this Court stated: (SCC p. 420, para 24)

“24. In order to sustain and maintain the sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered

*as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take the consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters is either mistaken or lightly taken instead of learning a proper lesson. Hence there is a compelling need to take a serious view in such matters to ensure expected purity and grace in the administration of justice.”*

*52. In the case on hand, the appellant has not come forward with all the facts. He has chosen to state the facts in the manner suited to him by giving an impression to the writ court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But we have also considered the merits of the case and even on merits, we are convinced that no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court.*

20. In the proceedings, carried under the provisions I & B Code, 2016, too, the basic governing norms to be followed to regulate the process of adjudication as it is contemplated under the provisions of the I & B Code, 2016, requires satisfaction of the basic tenements of fairness to the Ld. Tribunal/Appellate Tribunal, the reason being that, as per Section 424 of the Companies Act, 2013, the Tribunals are to be guided by the principle of natural justice, for the purposes of deciding and regulating the proceedings under I & B Code, 2016, which had been made applicable to all the proceedings under the I & B Code, 2016. In the judicial proceeding, which are primarily governed on the basis of the principle of natural justice, the least that is expected of the litigants or their representing counsels, who are agitating his cause, to place entire true, correct and complete facts on

record so that, the Ld. Tribunal/Appellate Tribunal and the opposite parties will come to know as to, and on what document reliance is being placed in projecting one's case so that, there may not be a deprivation of an effective opportunity to the other side, to the proceedings to counter the same, seen from that perspective, concealment of a document or making a misleading statement or not making any statement at all in relation to a document or a fact, and then placing the same on record by resorting to a process or to a procedure, which is otherwise unknown in the eyes of law itself is bound to vitiate the proceedings and such type of litigant who indulges in such acts in a judicial proceedings with the objective of procuring an order by misleading the Tribunals, Appellate Tribunals or Courts, should not be given any room.

21. In the light of the aforesaid, in fact, no consideration is required to be extended to the Appellant including hearing him in the instant company appeal in the light of the judgment rendered by the Hon'ble Apex Court in the matters of K.D. Sharma (Supra). Besides, what implication the order dated 25.01.2023 rejecting the application preferred under Section 65 of the I & B Code, 2016, and admitting of the application under Section 7 of the I & B Code, 2016, would have, on the instant appeal, can only be decided by this Appellate Tribunal subject to the condition that the complete case is projected by the Appellant before it, while agitating his cause in the instant company appeal, as against the impugned order

of 17.09.2025, as rendered in IA(IBC)/114/KOB/2024, as preferred in CP (IB)/06/KOB/2022.

22. What is relevant is that, particularly when the proceedings of the company petition on admitting an applications filed under Section 7 of the I & B Code, 2016, has attained finality, in the absence of the challenge being given to it in the appellate proceedings, as pleaded in para 7.8, of the Appeal Book, and when his own appeal, which he had earlier preferred against order dated 25.01.2023 has been dismissed, in that eventuality, the interlocutory application IA(IBC)/114/KOB/2024 which is a successive applications preferred under Section 65 of the I & B Code, 2016, and which has been decided by the impugned order in instant case, cannot be independently considered when the principal company petition of admitting the application of Section 7 of the I & B Code, 2016, by the judgement of 25.01.2023 itself has attained finality. The passing of the impugned order on 17.09.2025 cannot lead to give leverage to the Appellant for reopening the process of challenge to the commencement of CIRP, which has attained finality.

23. A comparative study of the reliefs sought in the IA(IBC)285/KOB/2022, preferred on 26.09.2022, and IA(IBC)/114/KOB/2024 filed on 08.03.2024, will show that the relief sought in IA(IBC)/114/KOB/2024 is broadly similar to the one, which was sought by the Appellant in the earlier IA(IBC)285/KOB/2022, which was rejected by the order of 25.01.2023. The comparative table of the

reliefs sought by the Appellant in the two IA's as preferred under Section 65 of the I & B Code, 2016, are extracted hereunder:

| <b>IA No. 285/2022</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>IA No. 114/2024</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Relief</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>Relief</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p><i>In view of the foregoing, the Applicant humbly pray that this Hon'ble Tribunal may be pleased to:</i></p> <p><i>(i) Pass appropriate order declaring that CP (IB) No. 6 of 2022 has been initiated by the respondent fraudulently and with malicious intent for purpose other than for the resolution of insolvency of the Corporate Debtor;</i></p> <p><i>(ii) Pass appropriate order levying penalty of the respondent as per Section 65 of the IB Code;</i></p> <p><i>(iii) Dismiss CP (IB) No. 6 of 2022 filed by the Respondent herein;</i></p> <p><i>(iv) Pass such other order as this Hon'ble Tribunal may deem fit.</i></p> | <p><i>In view of the foregoing, the Applicant humbly pray that this Hon'ble Tribunal may be pleased to:</i></p> <p><i>a. Pass appropriate order declaring that CP (IB) No. 6 of 2022 has been initiated by the 2nd Respondent fraudulently and / or with malicious intent for purpose other than for the resolution of Insolvency, or liquidation of the corporate debtor.</i></p> <p><i>b. To pass appropriate order levying penalty as per section 65 of the I &amp; B Code, 2016 on respondents 1 and 2.</i></p> <p><i>c. To pass appropriate order setting aside the order dated 25.01.2023 in CP (IB) No. 6 of 2022</i></p> <p><i>d. For such other and further directions as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.</i></p> |



24. The question which will fall for consideration by this Appellate Tribunal is, as to whether there can be a successive application, which could be filed by the Appellant for consideration by the Ld. Tribunal for the same or a similar relief, when an application filed earlier for the same or a similar relief has already been rejected and the said order has attained finality on the dismissal of an appeal preferred by the Appellant.

25. Quite obviously the clear answer would be '**No**', because a party to the proceedings cannot be permitted to abuse the judicial process by filing recurring applications, for the same cause of action or for the same relief, as it would vitiate the proceedings of the company petition and the judicial proceedings itself, owing to the fact, that once the earlier order has attained finality, the same cannot be permitted to be reopened by filing of a subsequent application, which is a case at hand, when the Appellant has filed IA(IBC)/114/KOB/2024, which has been rejected by the impugned order of 17.09.2025.

26. The Ld. Tribunal, after considering the aforesaid factual backdrop, had rightly came to the conclusion, that, the order of admission of the application filed under Section 7 of the I & B Code, 2016, because of the debt and the default having been established and a simultaneous decision dismissing the application IA (IBC)/114/KOB/2024 filed under Section 65 of the I & B Code, 2016, will always create a bar against the Appellant from pursuing the subsequent application IA(IBC)/114/KOB/2024 under Section 65 of the I & B Code, 2016.

27. The Ld. Tribunal aptly, after considering the rival contentions, has rightly observed that, the alleged element of fraud or a malicious intention in Section 7 proceedings, would be an element, which should have been prevalent right from the stage of inception of proceeding under Section 7 of the I & B Code, 2016, and if so, the same would have already been determined in the proceedings of the writ petition or, in the proceedings under Section 65 of the I & B Code, 2016, before Ld. NCLT, which turned out to be otherwise. In that eventuality, the same allegation cannot be permitted to be agitated repeatedly in the proceedings, particularly when the chapter itself has been closed by the order of 25.01.2023, by rejection of the earlier application under Section 65 of the I & B Code, 2016, because the act complained of in the first application has not changed with the change of circumstances or the time period to warrant filing of the subsequent application under Section 65 of the I & B Code, 2016.

28. The Ld. Tribunal, after considering the entire conspectus of the case, has observed that, when it has already determined the aspect of the allegations of malicious intention while admitting the application under Section 7 of the I & B Code, 2016, observing thereof, that none of the ingredients of Section 65 of the I & B Code, 2016, stood satisfied to sustain the subsequent proceedings, as drawn by the Appellant for imposition of a penalty, or a punishment as contemplated under Section 65 of the I & B Code, 2016, and the said issue has already been laid to rest, as a consequence of the commencement of Section 7 of the I & B Code,

2016 proceedings, the subsequent application IA(IBC/114/KOB/2024) would not be maintainable.

29. It is revealed from records placed before this Appellate Tribunal that, before the Ld. NCLT too, the Appellant had made a deliberate attempt to mislead the Ld. Tribunal, by concealing the fact of filing of the company appeal against the order of 25.01.2023 and of its dismissal and therefore Ld. Tribunal has proceeded on the premise, that its order of 25.01.2023 has attained finality because no appeal was preferred. The relevant observation has been made by the Ld. Tribunal in para, 31 of the impugned order, which is extracted hereunder: -

***31. At the outset, we have noted that the Applicant had already filed an application IA(IBC)/285/KOB/2022 under Section 65 of the Code during the Section 7 Petition, this Adjudicating Authority, after due consideration, admitted the petition under Section 7 in CP(IB)/6/KOB/2022 vide order dated 25.01.2023 on finding that financial debt existed, default exceeding Rs. 1 crore had occurred, and Corporate Insolvency Resolution Process was initiated, which **order has since attained finality as no appeal was preferred before Hon'ble NCLAT under Section 61 of the Code.*****

30. The Ld. Tribunal, while arriving to the conclusion, upon the consideration of the facts and evidence on record in its entirety has concluded, that all the allegations relating to the loan disbursement conditions, accounting of the repayment, charging of interest the conduct of the Resolution Professional and the functioning of the Committee of Creditors in the CIRP process, have never been attempted to be substantiated by the Appellant by any evidence placed on record, and therefore,

mere allegations being made Section 65 of the I & B Code, 2016, will not affect the proceedings under Section 7 of the I & B Code, 2016, because for the purposes of Section 7 of the I & B Code, 2016, only the aspect of 'debt' and 'default' are required to be established, which was an aspect already determined, in the finding which has been recorded by the Ld. Tribunal in the order which was passed on 25.01.2023, which had attained finality.

31. Since, the finding as recorded with regards to the aspect of debt and default has been affirmed by order of this Appellate Tribunal dated 13.04.2023 with the dismissal of appeal against the order dated 25.01.2023 of admission of Section 7 of the I & B Code, 2016, Ld. Tribunal, rightly declined to entertain the said application filed under Section 65 of the I & B Code, 2016, holding thereof that, the pleading raised by the Appellant, maligning the proceeding under Section 7 of the I & B Code, 2016, as of now cannot be held to be maintainable.

32. Hence, owing to the aforesaid backdrop, we are also of the considered view that:

- (i) The Appellant is not required to be heard even as he was not fair to the Ld. NCLT as well as to the Appellate Tribunal, by making material concealment in pleading and in placing documents on record.
- (ii) For the allegation made under Section 65 of the I & B Code, 2016, he has already failed in his endeavour, when his earlier application

stood rejected and the same has attained finality with the dismissal of company appeal.

(iii) Subsequent application under Section 65 of the I & B Code, 2016, for same cause based on same facts will not be maintainable.

33. The aspect of malafide or malicious proceedings, was already a subject matter of consideration, which as observed by the Ld. Tribunal, has not been established by any evidence on record. Further, it has been rightly held that, for the purposes of Section 7 of the I & B Code, 2016, proceedings, only the aspect of "debt" and "default" was required to be established, which had already been settled by the judgement of 25.01.2023, which has attained finality by judgment of 13.04.2023. Since the Appellant, has not been able to substantiate the existence of ingredients of Section 65 of the I & B Code, 2016, and has failed in his earlier efforts in the writ petition, and the two applications preferred before the Ld. Tribunal, the subsequent application filed by him before the Ld. Tribunal had been rightly rejected by the Ld. Tribunal holding it to be not maintainable.

34. Apart from it, the records also revealed that, the Appellant was dubiously participating in the proceedings. On one hand, Appellant was involved in initiating recurring proceedings attempting to somehow stall the proceedings under Section 7 of the I & B Code, 2016, while on the other hand, it was observed by the Ld. Tribunal that the Applicant i.e., the Appellant herein himself has also

submitted his Resolution Plan, availing the benefit of being the promoter of a MSME unit.

35. Hence, by his own act and conduct, the Applicant is precluded to question the validity of the admission of the application filed under Section 7 of the I & B Code, 2016, and subsequent commencement of proceedings. Consequently, the rejection of the application by the Ld. Tribunal by the impugned order doesn't suffer from any apparent error. But because of the fact that, the Appellant has not been fair to the Ld. Tribunal, as well as, to the Appellate Tribunal, we impose a cost of Rs. 50,000/- on the Appellant, for concealing the fact and not coming with clean hands before the Ld. Tribunals.

36. Subject to the aforesaid, the 'company appeal' lacks 'merit' and the same is accordingly 'dismissed'. And the pending interlocutory application, if any, would too stand closed.

**[Justice Sharad Kumar Sharma]**  
**Member (Judicial)**

**[Jatindranath Swain]**  
**Member (Technical)**

**24/03/2026**  
SN/MS/AK