IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Intervention Application (IB) No. 11/KB/2026
In
Company Petition (IB) No. 39/KB/2026

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:
Jaysheel Khemani

... Financial Creditor/ Applicant.

Versus

Cybercorp Limited

... Corporate Debtor/ Respondent.

Intervention Application (IB) No. 11/KB/2026

Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016

AND IN THE MATTER OF:

Anil Kaushik

... Proposed Intervenor

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

IVN. P. (IBC) No. 11/KB/2026
In
C.P. (IB) No. 39/KB/2026

Date of Pronouncement: 11.08.2026.

Coram:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

MS. REKHA KANTILAL SHAH, MEMBER (TECHNICAL)

Appearance:

Mr. Abhrajit Mitra, Sr. Adv.	]	For Financial Creditor
Mr. Jishnu Chowdhury, Sr. Adv.	]	
Mr. Rishav Banerjee, Adv.	]	
Mr. P.P. Bishwal, Adv.	]	
Mr. Jiya Bose, Adv.	]	
Ms. Jishnu Saha, Sr. Adv.	]	For Corporate Debtor
Mr. Joy Saha, Sr. Adv.	]	
Mr. Shaunak Mitra, Adv.	]	
Ms. Kiran Sharma, Adv.	]	
Mr. Ashish Dalmia, Adv.	]	
Mr. Utkarsh Kaushik Barr, Adv.	]	For the Intervenor
Mrs. Devyani I. Ashra, Adv.	]	

ORDER

PER Rekha Kantilal Shah, Member (Technical):

1. The Court congregated through hybrid mode.

2. Heard the Learned Counsels for both the parties.

Company Petition (IB) No. 39/KB/2026

3. **Factual matrix:**

The instant company petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, for brevity I&B Code, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by **"Jaysheel Khemani"**, hereinafter referred to as **"Financial Creditor"/ "Applicant"** against **"Cybercorp Limited"**, hereinafter referred to as "**Corporate Debtor"/ "Respondent"** seeking direction to initiate Corporate Insolvency Resolution Process (for brevity "CIRP") in respect of the Corporate Debtor due to a default in repayment of a financial debt amounting to Rs. 10,81,53,505/-.

4. **Submissions of the Applicant**:

4.1. It is submitted that the CD approached the FC seeking financial assistance in the form of a loan for its business purposes and obligations in or around May 2025.

4.2. Further that both the parties entered into a Loan Agreement dated 01.05.2025 (Annexure A-5 at page 46-53 of the Application), and the terms provide for:

i. Loan amount up to Rs. 10,00,00,000/- to be disbursed in tranches, from time to time, upon written requests of the CD. (Clause A at page 48 of Annexure A-5 of the Application)

ii. Loan Tenure of 3 years commencing from 01.05.2025, i.e., until 30.04.2028. (Clause B at page 49 of Annexure A-5 of the Application)

iii. Rate of Interest to be 12% p.a., calculated from the respective dates of disbursement of each tranche. (Clause D at page 49 of Annexure A-5 of the Application)

iv. Default Interest at the rate of 18% p.a. on the entire principal outstanding together with accrued interest on occurrence of any event of default. (Clause H at page 50 of Annexure A-5 of the Application)

v. Acceleration Clause which provides that, on failure to pay any interest amount on its due date, the entire outstanding principal loan amount together with all accrued interest shall immediately become due and payable without any further notice or demand. (Clause G at page 49 of Annexure A-5 of the Application)

4.3. It is further submitted that the CD issued disbursement request letters from time to time, and upon receiving the same, the FC disbursed the loan amount in tranches totaling Rs. 16,50,00,000/- (gross), out of which Rs. 6,50,00,000/- was returned by the CD on 15.05.2025, resulting in a net disbursement of Rs. 10,00,00,000/-. (Annexure A-5, A-6, A-7, A-8, and A-9 at pages 46-53, 54-56, 57, 58-65 and 66-68B respectively of the Application)

4.4. It is further contended that the first instalment of interest at the rate of 12% per annum on the amounts disbursed and outstanding fell due and payable on 01.11.2025, and the CD has failed and neglected to pay the said interest amount due on 01.11.2025, and thereby committing an event of default under the Loan Agreement.

4.5. Further that upon occurrence of the said event of default, the entire outstanding principal Loan Amount of Rs. 10,00,00,000/- together with all accrued interest become immediately due and payable on 01.11.2025, without any further notice or demand.

4.6. Further there is an additional interest rate liability of 6% p.a. on the CD in the event of default in repayment, in accordance with the provisions of Loan Agreement dated 01.05.2025, resulting in the total interest rate of 18% p.a. from 01.11.2025.

4.7. It is further submitted that the loan agreement dated 01.05.2025, records a loan of up to Rs. 10 crore carrying interest at 12% p.a., squarely satisfies the definition of Financial Debt u/s 5(8) of the I&B Code, 2016, which includes a debt disbursed against consideration for the time value of money, including money borrowed against payment of interest.

4.8. It is further argued that the defences raised by the CD in the reply affidavit do not preclude admission. The principal defence raised in the reply affidavit are that –

i. The FC is the son of Mr. Sourabh Khemani and Mrs. Joshita Davar Khemani, former promoters and directors of the CD.

ii. The Khemani family bloc held the overwhelming majority shareholding at the time of execution of the Loan Agreement, and the CD was under the family's control.

4.9. It is further argued that none of the defences raised bears on whether a financial debt exists or a default has occurred, and as such:

i. The CD is a separate juristic entity distinct from its shareholders and directors, and obligations undertaken by the company remain its own regardless of who its shareholder was at any given time.

ii. The I&B Code does not disqualify a related party financial creditor from filing an application under Section 7, and as such the only consequence of related party status under the I&B Code is the exclusion from representations, participation and voting in the COC.

iii. Further, it is the case of the CD, that the entire Khemani family shareholding was transferred to unrelated third parties in March 2026, and Mr. Sourabh Khemani and Mrs. Joshita Davar Khemani resigned as Directors on 21st January, 2026, which made the 'family control' narrative further removed from the present state of affairs, and in any case is irrelevant to the existence of debt and default.

4.10. It is further argued that the defence raised by the CD that notwithstanding the express terms of the Loan Agreement, it was orally or impliedly agreed between the parties that payment of interest would be deferred until the Corporate Debtor generated sufficient revenue, holds no good as the Loan Agreement dated 01.05.2025 expressly records that the Agreement "*supersedes all prior discussions and agreements (whether oral or written)*" between the parties, and that "*there shall be no amendment or waiver of any terms of this Agreement unless the same is specifically agreed to in writing by both Parties*", and as such the CD had not annexed any documentary evidence in support of his contention.

4.11. It is further argued that the CD relied on Section 9 and 63 of the Indian Contract Act, 1872, at the time of hearing. Ld. Counsel for the FC submitted that neither provision authorizes a party to rely upon an alleged oral understanding to vary or supersede the express terms of a written loan Agreement.

4.12. Ld. Counsel for the FC placed reliance on Section 95 of the Bharatiya Sakshya Adhiniyam, 2023, which expressly prohibits the admission of oral evidence to contradict, vary, add to, or subtract from the terms of a written contract, and as such, the alleged oral understanding, even if assumed to exist, cannot in law supersede, override, or modify the express terms of the written Loan Agreement.

5. **Submissions of the Respondent**:

5.1. Ld. Counsel for the Respondent admitted the debt alleged to be due and payable by it to the Financial Creditor (FC), but asserted that there is no default in the payment of such debt.

5.2. It is submitted that the instant application deserves to be dismissed as the FC has deliberately suppressed and misrepresented material facts.

5.3. It is submitted that the FC has not disclosed the fact that he is the son of one Dr. Sourabh Khemani, one of the promoters of the CD. Further, the CD was incorporated on 13th September, 2022, for the purpose of carrying on the business of software development, and the subscriber to the MOA includes the FC, Jaysheel Khemani, his father Sourabh Khemani, his mother Joshita Davar Khemani, one Anil Kaushik, one Utkarsh Kaushik, one Devyani Ashra and one Shyamal Das.

5.4. Further, it is submitted that 9994 shares were allotted to the said Joshita Davar Khemani, the mother of the FC and one share was allotted to each of the other subscribers to the MOA at the time of incorporation of the CD. As such, the FC and his immediate family members were allotted and owned 9996 shares of the 10,000 shares and were the persons who were essentially entitled to be and were in control of the management and affairs of the CD.

5.5. Further, that the Board of the CD was constituted at the pleasure of the FC and his immediate family members, and the initial directors of the Corporate Debtor Company were the said Sourabh Khemani, the said Anil Kaushik and the said Shyamal Das.

5.6. It is further submitted that from time to time further shares were issued and allotted in the CD even consequent on issuance and allotment of such additional shares, the bulk of the shareholding of the company continued to remain with the immediate family members of the FC, and as such 90% of the shares in the CD continued to remain with the Khemanis.

5.7. Further till the beginning of 2026, the Board of the CD continued to be comprised of the said Sourabh Khemani, the said Joshita Davar Khemani, the said Anil Kausik and the said Shyamal Das.

5.8. It is further submitted that in or around March 22, 2026, the Khemanis, however, transferred their entire shareholding in the CD to one Sourav Sadhukhan, one Rinku Dutta, one Ratna Dutta, one Biswajit Roy and one Khushi Roy. Further, the said Sourabh Khemani and the said Joshita Davar Khemani continued to be the directors of the CD till January 2026 and resigned as directors only on 21st January, 2026.

5.9. It is further contended that the loan agreement dated 1st May, 2025 was as such executed at a time when the Khemanis, including the FC, were in complete control of the CD, and upon recognition of the fact that further investments were needed for its business, the FC agreed to grant and granted the subject loan of an aggregate amount of Rs. 10 crores to the CD.

5.10. Further, that the loan agreement provided for repayment of the principal amount of the loan only after 30th April, 2028, and on payment of interest on the loan @12% per annum.

5.11. It is further argued that it was clearly always agreed by and between the FC and the CD that the payment of such interest would be subject to generation of revenue by the CD, and as no revenue could be generated, the FC clearly agreed that payment of such interest would be deferred till such time that the CD could generate sufficient revenue to service the interest on the loan amount.

5.12. It is further contended that accordingly no contemporaneous demand for payment of interest was made by the FC on the expiration of 1st November, 2025 or thereafter.

Intervention Application (IB) No. 11/KB/2026

6. The present Intervention Application has been preferred by Anil Kaushik (Applicant) under Section 60(5) of the I&B Code, read with Rule 11 of the NCLT Rules, 2016, seeking the following reliefs as under:

"a. permit the Applicant to intervene in C.P. (IB) No. 39/KB/2026 and participate in the proceedings,
b. in the alternative, implead the Applicant as a party to the present proceedings in such capacity as this Hon'ble Tribunal may deem fit and proper,
c. direct the Financial Creditor/Petitioner to furnish to the Applicant a complete copy of the company petition and all documents relied upon therein,
d. permit the Applicant to file an affidavit and/or written submissions placing relevant facts and documents on record; and
e. pass such further or other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

7. **Submission of the Intervenor:**

7.1. It is submitted that the Proposed Intervenor is the founder, continuing Director of the CD since its incorporation, and the holder of 10% of equity share of the CD, and was on the BOD of the CD throughout the period during which the alleged loan transaction was purportedly conceived, approved and acted upon. (Annexure A, B, C and D of the Intervention Application)

7.2. It is further submitted that the Proposed Intervenor has already instituted substantive proceedings under Section 241 and 242 of the Companies Act, 2013 challenging the affairs and management of the CD, and has placed contemporaneous statutory and corporate records.

7.3. It is further argued that no notice of any Board Meeting was ever served upon him, no lawful Board approval was obtained with his participation, and the corporate records relied upon by the FC are under challenge as fabricated, manipulated and unauthorized.

7.4. Ld. Counsel for the Intervenor further accepted the rule laid down in *Axis Bank Ltd. v. Lotus Three Developments Ltd. & Ors. Company Appeal (AT) (Ins.) No. 246 of 2018*, order dated 31.07.2018, but contended that a shareholder is not normally heard at admission because the CD is represented through its Board, and in *Clarion Health Food LLP v. Goli Vada Pav Pvt. Ltd., Company Appeal (AT) (Ins.) No. 1522 of 2023*, judgment dated 20.11.2024, but argued that the rule applies where the CD was independently represented and contested the petition.

7.5. Ld. Counsel further contended that the above rule is inapplicable in the present case as the alleged debt is admitted through management whose independence is itself challenged.

7.6. Ld. Counsel further placed reliance on:

i. *Ashish Gupta v. Delagua Health India Pvt. Lrd. & Ors., Company Appeal (AT) (Ins) No. 17 of 2022*, judgment dated 01.02.2023, and stated that the Hon'ble NCLAT upheld hearing of shareholders where a collusive insolvency petition and unauthorised representation left the corporate debtor without a genuine defence.

ii. *Ashmeet Singh Bhatia v. Pragati Impex India Pvt. Ltd. & Anr, Company Appeal (AT) (Ins) No. 1413 of 2023*, judgment dated 02.02.2024, and stated that even a non-party had locus to place glaring documentary facts of collusion before the Adjudicating Authority and that even admission of Section 7 does not denude Section 65 jurisdiction.

8. **Analysis and Findings**

8.1. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

<u>Intervention Application (IB) No. 11/KB/2026:</u>

8.2. At this juncture, before dwelling upon further submissions made by the Proposed Intervenor, and in the interest of judicial economy, it is relevant for us to determine whether the Intervenor has the *locus standi* to file the present Intervention Application in the instant Company Petition filed under Section 7 of the I&B Code, 2016, currently at the pre admission stage.

8.3. Further we do not find the order of the Hon'ble NCLAT in ***Ashish Gupta v. Delagua Health India Pvt. Lrd. & Ors., Company Appeal (AT) (Ins) No. 17 of 2022*** relevant here as the issue was entirely different in that case and was an appeal for dismissal under Section 9 of the I&B Code, 2016, and the judgment was centered on a pre-existing dispute and unique conditions where shareholders, instead of the Board, represented the Board at the admission stage of CIRP. In this particular case, the peculiar circumstances were that the Board of Directors of the Corporate Debtor had resigned and therefore there was no representation in CIRP proceedings on behalf of the Corporate Debtor before the Hon'ble NCLT. In the present case, the Corporate Debtor was represented throughout the proceedings before the Hon'ble NCLT. Therefore, we hold that the aforesaid ratio is not applicable in the present case.

8.4. Further, we find that the case of ***Ashmeet Singh Bhatia v. Pragati Impex India Pvt. Ltd. & Anr, Company Appeal (AT) (Ins) No. 1413 of 2023***, is inapplicable and irrelevant as the issue was related to an application under Section 65 of the I&B Code, 2016, alleging fraud and collusion between the CD and FC with documentary evidence of circular transaction. The appeal was not against the order of CIRP, and the observations made therein are categorically in respect of the exercise of powers under Section 65 of the I&B Code, 2016. Therefore, we hold that the aforesaid ratio is not applicable in the present case..

8.5. It is relevant for us to refer the judgment of the Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank (2018 1 SCC 407)***, where in para 28 and 30, the Supreme Court held:

"…It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due.…"

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"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."

8.6. In ***Prayag Polytech Pvt. Ltd. v. Hind Tradex Ltd., (2019) ibclaw.in 390 NCLAT***, the Hon'ble NCLAT in para 4 held,

"we are of the view that there is no requirement for intervention of any Directors or shareholders of the 'Financial Creditor' or any other party before admission of Application under Section 7 of IBC."

8.7. In ***Axis Bank Ltd. v. Lotus Three Developments Ltd. & Ors., (2018) ibclaw.in 149 NCLAT***, the Hon'ble NCLAT in para 6 and 9 held,

"No other person has a right to be heard at the stage admission of the application under Section 7 and 9 of the I&B Code including the 'shareholders' or the 'personal guarantor' etc.."

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"it is only the 'Corporate Debtor' is to be heard, who is represented through the Board of Directors and the 'Financial Creditor' and no other person such as 'shareholders' or the 'personal guarantor'."

8.8. In ***Peninsula Holdings and Investments Pvt. Ltd. v. JM Financial Credit Solutions Ltd. and Anr., (2025) ibclaw.in 887 NCLAT***, the Hon'ble NCLAT in para 48 held,

"the Appellant is not a "person aggrieved" under Section 61 of the code. The Appellant's shareholder status, whether equity or preference, does not confer any locus to challenge the admission of the Corporate Debtor's insolvency."

8.9. In ***Clarion Health Food LLP v. Goli Vada Pav Pvt. Ltd. and Anr., (2024) ibclaw.in 763 NCLAT***, the Hon'ble NCLAT in para 47 held,

"47. As owners the equity shareholders are biggest beneficiaries when the company does well. Their capital is multiplied due to increase in share prices and by receipt of dividends. On the other hand, if the company performs badly and goes in liquidation, the equity shareholders loose their entire share capital. The owners of the company have a major role to play in the proper functioning of the company, as equity shareholders are represented through the Board of Directors (BoD) and the BoD holds the management accountable for its proper functioning. If the company is admitted in CIRP, then it also reflects the failure of BoD on behalf of Equity Shareholders to hold the management accountable and hence

they should be prepared to bear the loss of the capital. This structure is the primary reason due to which the equity shareholders have not been allowed to initiate the CIRP process. As soon as the CIRP petition is admitted and IRP is appointed, the functions of the BoD are taken over by IRP. As a representative of Shareholders erstwhile Directors of CD are allowed to intervene and file appeals under Section 61, but the individual or even majority shareholders are not allowed to pursue derivative action. This comes out very clearly from the judgements of this appellate Tribunal in Nirej Paul (Supra) and Anant Kajare (Supra). The Shareholders or Investors in CD are not to be treated as "person aggrieved" under the IBC."

8.10. In view of the above, the Bench is of the view that the Proposed Intervenor has no *locus standi* in the present Company Petition under Section 7 of the I&B Code, 2016, and as such the Intervention Application deserves to be dismissed.

<u>Company Petition (IB) No. 39/KB/2026:</u>

8.11. At the outset, it is pertinent to note that the scope of enquiry under Section 7 of the Insolvency and Bankruptcy Code, 2016, is limited to ascertaining the existence of a financial debt and the occurrence of default. The solvency of the Corporate Debtor or the feasibility of recovery are not determinative factors at the stage of admission. The relevant extract of Section 7 of the I&B Code, 2016 are:

"Section 7(4). The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the ***existence of a default*** *from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)*

Section 7(5). The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(a) ***admit the application****, if it is satisfied that* ***a default has occurred*** *and the application under sub-section (2) is complete, and there is no disciplinary proceeding pending against the proposed resolution professional; or*

(b) reject the application, if it is satisfied that a default has not occurred or the application under sub-section (2) is incomplete or a disciplinary proceeding is pending against the proposed resolution professional:

…………………………….

Explanation I.—For the purposes of this sub-section, it is hereby clarified that where the requirements under clause (a) have been complied with, no other ground shall be considered to reject an application filed under this section.

……………………"

8.12. In ***Mukund Dewangan versus Oriental Insurance Co. Ltd.***, the Hon'ble Supreme Court has held as under in Para Nos. 31 and 32:-

> *"31. It is a settled proposition of law that while interpreting a legislative provision, the intention of the Legislature, motive and the*

philosophy of the relevant provisions, the goals to be achieved by enacting the same, have to be taken into consideration.

32. In Principles of Statutory Interpretation by Justice G.P. Singh, it has been observed that a statute is an edict of a legislature and the conventional way of interpreting or construing a statute is to seek the intention of its maker. The duty of the judicature is to act upon the true intention of the legislature – men's or sentential logic. If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which furthers the intention of the legislature as laid down in Venkataswamy Naidu R. v. Narasram Naraindas AIR 1966 SC 361 and District Mining Officer vs. Tata Iron and Steel Co. AIR 2001 (7) SCC 358. Lord Cranworth L.C. in Jane Straford Boyse v. John T. Rossborough 10 ER 1192 (HL) has observed: "There is no possibility of mistaking midnight for noon, but at what precise moment Twilight becomes darkness is hard to determine." As observed in Muray v. Foyle Meats Ltd. (1999) 3 All ER 769, faced with such problems, the Court is also conscious of a dividing line, but Court has to be conscious not to divert its attention from the language used in the statutory provision and encourage an approach not intended by the legislature. The first and primary rule of construction is that the intention of the legislature must be found in the words used by Legislature itself, as held in Kannai Lal Sur v. Paramnidhi Sadhukhan AIR 1967 SC 907. Each word, phrase or sentence is to *be construed in the light of the general purpose of the Act itself as held in Poppatlal Shah v. State of Madras AIR 1953 SC 274, Girdharilal & Sons v. Balbir Nath Mathur (1986) 2 SCC 237 and Atma Ram Mittal v. Ishwar Singh Punia (1988) 4 SCC 284."*

8.13. Explanation I to Section 7(5) of the I&B Code, 2016, makes it clear that, while considering an application under Section 7 of the I&B Code, 2016, no grounds other than those specified in Section 7(5) shall be considered for the admission or rejection of such application.

8.14. It is the case of the FC that the CD approached the FC seeking financial assistance for its business purposes and for that entered into a Loan Agreement dated 01.05.2025 (Annexure A-5 at page 46-53 of the Application).

8.15. The salient terms of the loan agreement dated 01.05.2025 provides for:

i. Loan amount up to Rs. 10,00,00,000/- to be disbursed in tranches, from time to time, upon written requests of the CD. (Clause A at page 48 of Annexure A-5 of the Application)

ii. Loan Tenure of 3 years commencing from 01.05.2025, i.e., until 30.04.2028. (Clause B at page 49 of Annexure A-5 of the Application)

iii. Rate of Interest to be 12% p.a., calculated from the respective dates of disbursement of each tranche. (Clause D at page 49 of Annexure A-5 of the Application)

iv. Default Interest at the rate of 18% p.a. on the entire principal outstanding together with accrued interest on occurrence of any event of default. (Clause H at page 50 of Annexure A-5 of the Application)

v. Acceleration Clause which provides that, on failure to pay any interest amount on its due date, the entire outstanding principal loan amount together with all accrued interest shall immediately become due and payable without any further notice or demand. (Clause G at page 49 of Annexure A-5 of the Application)

8.16. It is on record the written disbursement request letters issued by the Corporate Debtor seeking additional tranches under the same loan agreement. (Annexure A-5, A-6, A-7, and A-8 at pages 46-53, 54-56, 57, and 58-65 respectively of the Application)

8.17. The Bank statement of the FC also undisputedly brought on record the details of the disbursement of loan to the CD and the amount returned by the CD thereof (Annexure A-9 at page 66-68B of the Application). The relevant extract are given below for reference:

2	06/05/2025	06/05/2025		BIL/INFT/EEA5533165/ CYBERCORP LIMIT	10000000.00	0.00	12639231.64
5	13/05/2025	13/05/2025	464	TRF/CYBERCORP LTD/ICI	65000000.00	0.00	139231.64
7	15/05/2025	15/05/2025		INF/INFT/040283602871/CYBERCORP LIMIT	0.00	20000000.00	21039231.64
8	15/05/2025	15/05/2025		INF/INFT/040283656641/CYBERCORP LIMIT	0.00	20000000.00	41039231.64
9	15/05/2025	15/05/2025		INF/INFT/040283698521/CYBERCORP LIMIT	0.00	25000000.00	66039231.64

2	10/06/2025	10/06/2025		BIL/INFT/EFE1445381/ CYBERCORP LIMIT	10000000.00	0.00	55957672.87
3	12/06/2025	12/06/2025		BIL/INFT/EFG1776651/ CYBERCORP LIMIT	5000000.00	0.00	50957672.87
7	30/06/2025	30/06/2025		BIL/INFT/EFY4108639/ CYBERCORP LIMIT	10000000.00	0.00	41236474.87
1	04/08/2025	04/08/2025		BIL/INFT/EH43562325/ CYBERCORP LIMIT	10000000.00	0.00	26529965.50
3	05/08/2025	05/08/2025		BIL/INFT/EH54089634/ CYBERCORP LIMIT	5000000.00	0.00	21434618.73
6	20/08/2025	20/08/2025		BIL/INFT/EHO9342016/ CYBERCORP LIMIT	10000000.00	0.00	11234618.73
7	22/08/2025	22/08/2025		BIL/INFT/EHQ9900447/ CYBERCORP LIMIT	10000000.00	0.00	1234618.73
11	26/08/2025	26/08/2025		BIL/INFT/EHU1015990/ CYBERCORP LIMIT	5000000.00	0.00	171489.51

8.18. Irrefutably and indisputably, there is an admission on the part of the Corporate Debtor of its debts and default and its liability to repay by way of reply affidavit dated 02.04.2026.

8.19. It is observed from the record that no part of the interest instalment due on 01.11.2025 was paid by the CD, and thereby the said act constitutes an act of default under the Loan Agreement dated 01.05.2025.

8.20. The defence raised by the CD about the ‘relationship’ and ‘family control’ is not legally relevant in the pre admission stage under Section 7 of the I&B Code, 2016, as the Adjudicating Authority is only required to ascertain the financial debt and default under Section 7 of the I&B Code, 2016.

8.21. In the above issue, the Hon'ble NCLAT in ***Clarion Health Food LLP v. Goli Vada Pav Pvt. Ltd. and Anr., (2024) ibclaw.in 763 NCLAT***, in para 33 held,

"33. We are aware that the disputes related to shareholder oppression or mismanagement under the Companies Act, 2013 are distinct issues governed by separate statutory provisions and fall outside the purview of the Code. As a special statute, the IBC prevails over the Companies Act pursuant to Section 238, which has been affirmed by the Hon'ble Supreme Court in Innoventive Industries Ltd. v. ICICI Bank (2018), which held that the resolution process under the IBC takes precedence over any conflicting laws. Hence, the contention of appellant regarding resolution of Company Petition under Section 241 & 242 of Companies Act, 2013 before the CIRP petition does not hold water."

8.22. Further the 'deferred interest' defence raised by the CD is not substantiated by any documents on record.

8.23. Section 9 of the Indian Contract Act, 1872, provides:

"Promises, express and implied.—In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied."

8.24. Section 63 of the Indian Contract Act, 1872, inter alia, provides

"Promisee may dispense with or remit performance of promisee.—Every promisee may dispense with or remit, wholly or in part, the performance of the promisee made to him, or may extend the time for such

performance,or may accept instead of it any satisfaction which he thinks fit."

8.25. Section 95 of the Bharatiya Sakshya Adhiniyam, 2023, inter alia, provides:

"Exclusion of evidence of oral agreement.—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 94, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:"

8.26. On a conjoint reading of the above provisions, we are of the view that none of the aforesaid provisions of the Indian Contract Act, 1872, authorises a party to rely upon an alleged oral understanding to vary or supersede the express terms of a written Loan Agreement. Further Section 95 of the Bharatiya Sakshya Adhiniyam, 2023, expressly prohibits the admission of oral evidence to contradict, vary, add to, or subtract from the terms of a written contract.

8.27. The transactions between the parties establishes a "debt along with interest disbursed against the consideration for the time value of money" and appears to be "money borrowed against the payment of interest" which satisfies the definition of "financial debt" as in Sub section 8 of Section 5 of the IBC.

8.28. In view of the aforesaid documentary evidence, this Adjudicating Authority is satisfied that the Financial Creditor has established the existence of a financial debt.

8.29. Once the "debt' and "default" are admitted or established, the petition must be admitted.

8.30. We are fortified in our view with the decisions of Hon'ble Supreme Court which define "Financial Debt" and to initiate Corporate Insolvency Resolution process as under:

(a) Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401 **in para 43*:***

"*the basic elements are that it ought to be a disbursal against the consideration for time value of money."*

(Emphasis added)

(b) Indus Biotech Private Limited **v.** ***Kotak India Venture (Offshore) Fund*** reported in **(2021) 6 SCC 436: MANU/SC/0231/2021 (para 14)** that:

"*14.* *... <u>in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor</u>...*"

(Emphasis added)

(c) Innoventive Industries Ltd. **v.** ***ICICI Bank*** reported in **(2018) 1 SCC 407: MANU/SC/1063/2017 has** laid down that:

> **"*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. ...'*
>
> **"*28.*** *... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ..."*
>
> **xxx xxx xxx xxx**
>
> **"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."*
>
> **(Emphasis added)**

9. In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 39/KB/2026** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

i. The Application filed by **Jaysheel Khemani (Financial Creditors),** under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Cybercorp Limited (Corporate Debtor).**

ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

(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 Securitisation 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.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a 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, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

iv. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator**.**

vi. The Applicant has proposed the name of "Mr. Atul Rajwadkar", Reg. Address: 47, Hindusthan Colony, Wardha Road, Nagpur, Maharashtra- 440015, IBBI Registration no. IBBI/IPA-001/IP-

P00152/2017-18/10321 (Email address: vervecapital@gmail.com), as the "IRP". We have perused that there is a written communication and consent of IRP in Form 2. (Annexure A-3 at page 37-44 of the Application), as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or IPA with whom the member is registered. In addition, further necessary disclosures have been made by "Mr. Atul Rajwadkar" as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint 'Mr. Atul Rajwadkar" as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20, 21 and other provisions of the I&B Code.

vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the

Code and call for the submission of claims under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

viii. During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. Any person who is or has been personnel of the Corporate Debtor or its promoter, or is associated with the management of the Corporate Debtor, or engaged under a contract for service with the Corporate Debtor, shall provide all documents in their possession and furnish all information within their knowledge, and extend all assistance and cooperation to the Interim Resolution Professional as may be required for managing the affairs of the Corporate Debtor or performing the duties conferred upon the Interim Resolution Professional within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

ix. The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.

x. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.

xi. The Financial Creditors shall be liable to pay to IRP a sum of Rs. 3,00,000/- (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

xii. In terms of sections 7(5) and 7(7) of the Code, the Registry of this Adjudicating Authority is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

xiii. Additionally, the Registry of this Adjudicating Authority shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate

Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

xiv. The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xv. The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

xvi. The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

10. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

11. Post the Company Petition on 03/09/2026 for filing the Periodical Progress Report by the IRP/RP as appointed herein.

REKHA KANTILAL SHAH	**BIDISHA BANERJEE**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

This Order is signed on this, the 11th Day of August, 2026.

Sagar M. (LRA)