

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2364 of 2024

**[Arising out of the Order dated 13.12.2024, passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Kolkata Bench, Court-I), in CP (IB)/1781(KB)2019]**

IN THE MATTER OF:

1. Bijendra Prasad Mishra

aged about 64 years,
S/o Devla Din Mishra, working for gain at,
M/s HS Mercantile Private Limited
Office at: 65/1 Jogendra Nath Mukherjee
Road, Bandhaghat, Howrah, Bally,
Jagachha, West Bengal-7111 06

...Appellant

Versus

1. M/s HS Mercantile Pvt. Ltd.

Through Interim Resolution Professional
Mr. Neeraj Kumar Sureka
Registration number IBBI/IPA-001/IP/P-
01539/2019-2020/12517
Office At: "Central Plaza" 6th Floor, Room No.
'H'
41B, B. Ganguly Street, Kolkata-700012
Mobile:9831114540
Email Id-cirp.bsmp1@gmail.com

...Respondent No. 1

2. M/s Drolia Agencies Pvt. Ltd.

(M/s Subh Chintak Commotrade Pvt. Ltd.)
Office At: 7, B.B.
Ganguly Street, 3rd Floor,
Kolkata- 700012

...Respondent No. 2

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate along with Mr.
Ritesh Agrawal & Ms. Priyanshi Sharma.
For Respondent : Mr. Sunil Choraria, for R-1/RP.
Ms. Pooja Agrawal, for R-2.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

The instant appeal is preferred against the impugned order dated 13.12.2024 passed by the National Company Law Tribunal, Kolkata Bench (Court-I) in CP No. (IB) 1781/KB/2019, whereby application moved by Respondent No. 2 under Section 7 of the IBC has been accepted and CIRP is initiated against Respondent No. 1/CD.

2. The appellant in memo of appeal has stated that M/s Subh Chintak Commotrade Pvt. Ltd. (the Erstwhile Creditor who has now amalgamated with Drolia Agencies Pvt. Ltd./Respondent No. 2) was in trade of textile materials and had approached the appellant in 2009 for the supply of textile materials and fabrics and for that purpose has paid an advance of Rs. 50 lakhs, however, there was a delay in supply of materials due to some dispute in the quality and therefore, the advance which was given remained lying with the appellant and could only be settled by the supply of the textile material on 01.04.2016 and thus the advance money taken by the appellant was discharged by the supply of material by way of 23 invoices of amount of Rs. 72,39,520/- on 01.04.2016 pertaining to which the Respondent financial creditor has also issued confirmation of account on 04.04.2016.

3. It is further stated that an application under Section 7 of the Code was filed by the original creditor M/s Subh Chintak Commotrade Pvt. Ltd. for default of financial debt of Rs. 50 lakhs which was already settled in the manner stated herein before, however the Ld. Tribunal vide its order dated 09.07.2019 dismissed the same for non-prosecution and a restoration

application moved by M/s Subh Chintak Commotrade Pvt. Ltd. herein after called Subh Chintak was also dismissed on 31.07.2019.

4. It is further stated that the above mentioned restoration application was dismissed with the liberty to file a fresh application under Section 7 of the IBC and after the amalgamation of Subh Chintak with Respondent No. 2/ Drolia Agencies Pvt. Ltd. an application under Section 7 of the IBC was filed by Respondent No. 2 on 01.10.2019 which was also dismissed by the adjudicating authority on 29.04.2022. However, an appeal against the said judgment was filed by the Respondent No. 2 being CA (AT) (Ins) No. 1054 of 2022 which was decided by this Appellate Tribunal on 07.12.2023 whereby the impugned order was set aside and the matter was remanded back to the adjudicating authority to decide the issue of limitation again, after affording opportunity of being heard to the parties.

5. It is further stated that NCLT in compliance of the order of this Appellate Tribunal has passed the impugned order whereby the application moved by the Respondent No. 2 under Section 7 of the Code has been accepted.

6. It is also stated that the adjudicating authority by order of this tribunal was only directed to examine the question of limitation however it has dwelled on many other issues unnecessarily and completely ignored the fact that there is no financial contract produced before it nor there was any other relevant document with regard to advance of loan and Ld. Tribunal failed to consider the certificate issued by the Chartered Accountant of the appellant in right perspective and the fact that the debt has been fully discharged by supply of goods on 01.04.2016 has also not been considered

at all while there was an acknowledgment and the issue of limitation has also not been considered in the background of the settled legal principles. The prayer has been made to quash/ set aside the impugned order and accept the appeal.

7. The Respondent No. 2 has filed its reply denying each and every averment stated in the memo of appeal and further stated that the appeal is not maintainable in law and also on facts. Respondent No. 2 disbursed inter corporate loan of Rs. 50,00,000/- payable by the appellant from the bank account of Subh Chintak which has now merged with Respondent No. 2/Drolia Agencies Pvt. Ltd., on 07.11.2009 through RTGS. The corporate debtor had deducted and deposited the TDS on the interest amounting to Rs. 4,50,000/- (@ 9% p.a.) on Principal amount of Rs. 50,00,000/- which is also reflected in Form 26 AS of Subh Chintak from the assessment year 2010-2011 till assessment year 2015-2016.

8. It is further stated that the Respondent continuously demanded the repayment of this inter corporate loan but he was assured by the appellant, however the amount was not paid and thus a notice was served on the CD on 04.04.2016 which was ignored by the appellant and no response of the same was given.

9. It is further stated that in the financial statement of 2016-2017 of the corporate debtor/appellant there is clear acknowledgement of debt by the CD and thus a fresh limitation period starts from this acknowledgement moreover the CD had reflected the amount of loan in their financial statements for the financial years commencing from 2009 to 2017 and the calculation of the loan amount made by the Creditor is also tallying exactly

with the loan amount shown by the CD/appellant in the Balance Sheet of the year 2016-2017 i.e. Rs. 74,82,590/- under the head of loan term borrowings (Pg- 179 of the Appeal Paper Book).

10. It is also stated that another notice was served on CD 05.02.2019 which was also not responded and as a loan has not been repaid, an application under Section 7 of the Code was submitted by Respondent No. 2 which was rejected, however an appeal was preferred and the matter was remanded and on remand the impugned order has been passed by the Ld. Tribunal specifying clearly that the application has been filed within the prescribed limitation and it is the case of existence of a legally payable debt and default and thus the tribunal initiated the insolvency proceedings against the appellant.

11. It is further stated that there is no illegality in the impugned order and keeping in view the clear admission of the CD with regard to the receipt of financial debt and no substantive evidence has been produced with regard to supply of any material and also the fact that the TDS is shown by the CD to have been paid on the interest accrued thereon and also the calculation of 9% interest rate clearly shows that this amount was given as a financial debt for time value of money and therefore no illegality has been committed by the tribunal in accepting the application thus the appeal is liable to be dismissed.

12. The appellant in its rejoinder, amongst other grounds has stated that the amount of Rs.74,82,590/- as shown as sundry advances in the balance sheet of financial year of 2016-2017 was not payable to the financial creditor

and the same was with regard to some other creditors and is also not tallying with the loan amount claimed by the financial creditor.

13. Relying on the various invoices of the date 01.04.2016, it is stated that the advance money i.e. 50 lakhs which was taken for the supply of fabric has been discharged by the supply of fabric and also that the alleged debt was not a financial debt. It is reiterated that the petition was barred by limitation as existence of this debt has not been shown in the financial statement of the appellant/CD in financial statement of the year 2016-2017 and thus there is no default also.

14. We have heard Ld. Counsel for the parties and have perused the record.

15. Ld. Counsel for the appellant submits that the impugned order has been passed by the tribunal in clear contravention of the order dated 07.12.2023 passed by this Appellate Tribunal whereby the matter was remanded back and the issue was only with regard to the examination of the balance sheet of CD as on 31.03.2017 pertaining to the financial year 2016-2017, in order to assess, as to whether the application is barred by limitation.

16. It is vehemently submitted that Rs. 50,00,000/- were given only as advance money to the appellant by Subh Chintak for supply of fabric and there was some dispute with regard to its quality this money remained pending for long and since the CD had kept the money as advance a provision of 9% interest was made and TDS was also deducted till the year 2015-2016 and ultimately the advance given by the financial creditor was settled on 01.04.2016 by supply of material/goods which have also been

acknowledged by the financial creditor by way of 12 invoices totaling Rs. 72,39,520/- and confirmation with regard to the same has also been issued by the financial creditor on 04.04.2016.

17. It is vehemently submitted that since there is no acknowledgment of alleged financial debt in the financial accounts of the CD in its financial statement of the financial year 2016-2017, in absence of any acknowledgment in writing the application was barred by limitation.

18. It is also submitted that the Ld. Tribunal has committed manifest illegality in ignoring the certificate issued by the CA firm of the appellant wherein it was specifically stated that the amount of loan shown in the financial statements of year 2017 was with regard to some other creditors and was not having any relation with the financial creditor.

19. It is also submitted that Ld. Tribunal has also not considered that there is no written agreement with regard to the disbursement of loan and in absence of the same the money which has been advanced by the financial creditor as an advance money to supply goods may not be termed as a financial debt under Section 5(8) of the Code, reliance in this regard has been placed on the judgment dated 09.09.2024 of this Appellate Tribunal passed in **CA (AT) (Ins) No. 1145 of 2024, Imdadali M Momin vs. Pellucid Lifesciences Pvt. Ltd.**

20. It is also submitted with considerable force that the financial creditor is admittedly an Non-Banking Financial Company (NBFC) and as per the RBI Circular of date 28.09.2006 in absence of any written agreement for advancement of this loan the same could not be treated as financial debt and reliance in this regard has been laid on law propounded by this

Appellate Tribunal in **CA (AT) (Ins) No. 251 of 2020, Pawan Kumar vs. Utsav Securities Pvt. Ltd. & Anr.** and thus it is requested that the impugned order be set aside and the appeal be allowed.

21. Ld. Counsel appearing for the Respondent No. 2/M/s Drolia Agencies Pvt. Ltd. submits that the Ld. Tribunal has not committed any illegality so far as the acceptance of the application moved by the Respondent No. 2 is concerned as it was a clear case of existence of a financial debt, default and also of acknowledgment of debt in the financial statements of the CD of the year 2017 and therefore the application was also filed within the prescribed limitation.

22. While drawing the attention of this tribunal on various documents placed on record it is submitted that the disbursal of loan of Rs. 50,00,000/- is evident by the financial statements of the Respondent No. 1 i.e. erstwhile creditor and appellant and in presence of the entry in the bank account statement of both there was no need of any written agreement.

23. It is further submitted that this Appellate Tribunal vide its order dated 07.12.2023 had remanded the matter back to the Ld. NCLT with a direction to decide the issue of limitation again after affording opportunities to the parties and after appreciating various documentary evidence the Tribunal has found that there is a clear acknowledgment of the debt in the financial accounts statements of the CD of 31.03.2017 and therefore held that the application had been moved within the extended period of limitation by virtue of Section 18 of the Indian Limitation Act.

24. It is further submitted that the CD has reflected the amount of loan in its financial statements right from the financial year 2009-2010 till 2016-

2017 and the financial debt was categorised as sundry creditors/unsecured loan or long-term borrowings in its balance sheets which shows that it was not an advance for sale of goods but was an inter corporate loan.

25. It is further submitted that so far as the issuance of a false certificate by the CA of the appellant is concerned a complaint has already been filed against the said CA firm for issuing a false certificate.

26. It is further submitted that a notice under Section 433 and 434 of the Companies Act, 1956 was also issued, on 04.04.2016 to the CD for the payment of the loan amount however the said notice was not responded and thereafter a demand notice was again served on CD on 05.02.2019.

27. It is also submitted that so far as the defence taken by the appellant of supplying material in lieu of the amount taken allegedly as advance is not substantiated by any evidence and it is evident that Respondent No. 2 does not deal in textile as majority of its revenue arise from stocks and shares, no copy of purchase order or any other document has been placed which may reflect on any supply of goods by the CD except few fake invoices. It is also emphasised that the closing inventory of the appellant as on 31.03.2016 was about Rs. 30,94,726/- however the goods are shown to have been supplied of the amount of Rs. 72,39,250/- which is the exact amount of loan shown in the financial accounts of the CD. However, the goods have never been supplied and the supply of goods itself becomes doubtful as all the invoices are of the same date i.e. 01.04.2016 without any explanation as to why the material has been supplied through many invoices and the freight charge is only shown to have been paid of Rs. 3274/- which belies the false story cooked up by the appellant.

28. It is further submitted that the deduction of tax at source under Section 194 A of the Income Tax Act clearly shows that the amount given to the appellant/CD was a financial debt for time value of money and the amount of Rs. 74,82,590/- reflected under the long term borrowings in the audited financial statement of the CD of the year 2016-2017 corresponds to the debt acknowledged in the CIRP order dated 13.12.2024 and this alignment clearly establishes that the appellant was admittedly owing a financial liability to the Respondent No. 1/2. All the challans and invoices which have been relied on by the appellant in order to show that the fabric/goods were supplied are false, concocted and could not be believed.

29. Having considered the submissions made by the Ld. Counsels for the parties and having also gone through the written submissions preferred by them it is reflected that the application was filed by the Respondent No. 2 under Section 7 of the Code with the allegations that as per arrangement and understanding between the parties an inter corporate loan of Rs. 50,00,000/- was disbursed by the erstwhile creditor Subh Chintak to the CD/appellant on 07.11.2009. The copy of the bank statement has been placed on record would show the debit of this amount from the bank account of Subh Chintak, who has been merged with Respondent No. 2 in favour of the CD. On default in payment committed by the CD a notice is claimed to have been issued by Subh Chintak under Section 433 and 434 of the Companies Act, 1956 read with Section 271 of the Companies Act on 04.04.2016. It is claimed that neither the loan has been paid nor reply to this notice has been given thus another demand notice is stated to have been issued by the Respondent No. 2 on 05.02.2019 on the registered

address of the CD demanding Principal amount of Rs. 50,00,000/- plus accrued interest which is equal to Rs. 88,74,520/- till 31.01.2019. Default stated to have occurred on 15.02.2019 i.e. after ten days of the notice.

30. In Part-IV of the Form 1 following information has been provided by the financial creditor:

Part-IV

Particulars of Financial Debt		
1.	<i>Total Amount of Debt Granted Date(s) of Disbursement</i>	<i>As per arrangement and understanding between the parties, an inter -corporate loan of Rs. 50,00,000/- was disbursed to the Corporate Debtor by Subh Chintak Commotrade Pvt. Ltd. (now merged with Drolia Agencies Pvt. Ltd.) on 7th November, 2009 through RTGS in HDFC Bank Account No. HDFCH09311648859. Copy of Bank Statement for the period on which amount was debited to the Corporate Debtor is annexed herewith and marked as Annexure - 5.</i> <i>The said loan was disbursed at the agreed rate of interest of 9% per annum and that the interest amount was payable annually and further the loan would be repaid back immediately when recalled or demanded back by Subh Chintak Commotrade Pvt Ltd.</i> <i>The Corporate Debtor did not pay any interest after disbursement of Loan Amount though as per understanding, interest was required to be serviced annually.</i> <i>Subh Chintak Commotrade Pvt Ltd, seeing that the default was continuing every day from 2010, decided to recall the loan facilities since as per understanding, the loan was required to be repaid back immediately upon demand. Subh Chintak Commotrade Pvt. Ltd. accordingly sent the loan recall notice cum Notice u/s 433/434 of the Companies Act, 1956 read with section 271 of the Companies Act, 2013 to the</i>

		Corporate Debtor on 4th April, 2016. In spite of receipt of the said loan recall notice, the Corporate Debtor neither repaid the loan cum accrued interest nor replied to the loan recall notice. Copy of the said notice is annexed herewith and marked as Annexure- 9. The Corporate Debtor thereafter for the year ending 31st March 2017 and 31st March 2018 confirmed the dues and outstanding payable by the Corporate debtor to Subh Chintak Commotrade Pvt. Ltd. on account of the aforesaid loan disbursed in 2009. Copies of the balance confirmation are enclosed herewith as Annexure10. Subh Chintak Commotrade Pvt. Ltd. further demanded the outstanding principal amount of Rs. 50 lakhs plus the accrued interest from the Corporate Debtor on several occasion, but the Corporate Debtor did not bother to pay the same. Finally, Subh Chintak Commotrade Pvt. Ltd. issued another Demand Notice dated 05th February, 2019 to the registered address of the Corporate Debtor demanding the outstanding principal amount of Rs. 50 lacs plus accrued interest, aggregating to Rs. 88,74,520 till 31st January 2019. In spite of receipt of the said letter, the Corporate Debtor neither made payment nor replied to the said letter. Copy of the said demand notice is annexed herewith and marked as Annexure- 11 On 28th March, 2019, Subh Chintak Commotrade Pvt. Ltd. amalgamated with Drolia Agencies Pvt. Ltd. (herein referred to as Financial Creditor) with all its assets and liabilities vide order passed by this Hon'ble tribunal. Copy of the said order is annexed herewith and marked as Annexure- 15 On effective of this order, all the rights, properties, interest, liabilities and duties of Subh Chintak Commotrade Pvt. Ltd. be transferred and be vested without further act or deed in Drolia Agencies Pvt. Ltd. pursuant to Section 230 to 232 of the Companies Act, 2013.
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		The dues of the corporate Debtor are admitted and unimpeachable. Hence, Drolia Agencies Pvt. Ltd. (the Financial Creditor herein) is filing this instant section 7 application.
2.	Amount claimed to be in default and the Date on which the default occurred	Amount of default: The amount claimed as default is Rs. 50,00,000/- towards the principal amount given as Inter- Corporate Deposit. Further an interest of Rs. 40,39,250/-remains unpaid as on 31st March, 2019. Date of Default: 4th April 2016 and continuing every day including on 5th February 2019 Total amount outstanding as on 31st March, 2019 is Rs. 90,39,250/-. Working of Computation Sheet for the Amount in Default is Annexed herewith & Marked as Annexure-6.

31. In Part-V of the Form 1 following entries were made in column no. 7 and 8 which is also reproduced as under:

Part-V

Particulars of Financial Debt [Documents, Records and Evidence of Default]		
7.	COPIES OF ENTRIES IN A BANKERS BOOK IN ACCORDANCE WITH THE BANKERS BOOKS EVIDENCE ACT, 1891 (18 OF 1891)	Copy of Bank Statement of Subh Chintak Commotrade Pvt. Ltd. for the period on which amount was debited to the Corporate Debtor is annexed herewith and marked as Annexure - 5 .
8.	List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default.	Certain documents received during the period of transaction with the corporate debtor in the normal course of business are as under: - Annexure-7: TDS statement of Financial Creditor for the FY 2009 - 2010 to FY 2014-15. Annexure-8: Audited Financial Statements of Last two Financial

		<i>Year i.e FY 2016-17 and 2017- 18 of the Corporate Debtor</i> Annexure-9: Notice served to the Corporate Debtor u/s 433/434 of the Companies Act., 1956 read with section 271 of the Companies Act, 2013 dated 4th April, 2016 Annexure-10: Confirmation of Accounts for the period 2016-17 and 2017-18 Annexure-11: Demand Notice served to the Corporate Debtor on 5th Feb, 2019 Annexure-13: Certified Copy of the Amalgamation order passed by the Hon'ble NCLT Kolkata Bench dated 28.03.2019 Annexure-14: Form INC 28 filed with RoC
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32. The Bank account statement of M/s Subh Chintak of HDFC is also placed on record showing payment of Rs. 50,00,000/- to CD on 07.11.2009 a copy of which has been placed at page no. 152 of the appeal paper book.

33. In Form I Part –V, column 8 in list of documents amongst other documents, audited financial statement of two financial years 2016-2017 and 2017-2018 of the CD and the confirmation of the accounts for period 2016-2017 and 2017-2018 have been enclosed.

34. In his reply filed before this Appellate Tribunal the Respondent No. 2 has given the details of the amount shown in financial statement of CD of various financial years as under:

Year	Under the Head	Amount in Rs.	Remarks
2009-10	Unsecured Loan	52,14,520	In schedule 3 with the name of Financial Creditor;
2010-11	Unsecured Loan	56,19,520	In schedule 3 with the name of Financial Creditor;

2011-12	Long Term Borrowings	60,24,520	In note 6 with name of Financial Creditor;
2012-13	Long Term Borrowings	64,29,520	In note 6 with name of Financial Creditor;
2013-14	Long Term Borrowings	1,69,79,177	Note no 4 but name of Financial Creditor and details are not given;
2014-15	Long Term Borrowings	2,00,07,791	Note no 4 but Financial name of Creditor and details are not given;
2015-16	Long Term Borrowings	72,39,520	Note no 4 , and figures matches with our calculation and respondent confirmed the same in his submission before Hon'ble NCLT;
2016-17	Long Term Borrowings	74,82,590	No details are provided in Financial Statement.

In the aforesaid table till 2016-2017 loan amount is claimed to have been shown by the CD in his financial account books, though under different headings.

35. After filing of the application under Section 7 of the Code i.e. IA No. 1781 of 2019, reply was filed by the appellant copy of which has also been placed at page no. 274 of the appeal paper book. Apart from plea of limitation the plea of receiving Rs. 50,00,000/- as advance for supply of fabric and supply of fabric against this amount on 01.04.2016 has been pleaded. Thus the appellant since beginning has accepted the receipt of Rs. 50,00,000/- by it but only as an advance for supply of fabric and the supply of fabric was also pleaded to have been made on 01.04.2016.

36. Evidently in para no. 7 of this reply it is also stated that the provision of interest with regard to the advance of Rs. 50,00,000/- was made in the

books of account and TDS was duly deposited on the interest amount accrued till 31.03.2015 and no TDS was deposited thereafter.

37. Pertaining to the demand notice sent by creditor it was stated that a telephonic conversation was held between the parties, thereafter, wherein the appellant was asked by creditor to ignore the notice as the same was sent by mistake.

38. Appellant at the time of earlier litigation before this Appellate Tribunal has filed an additional affidavit whereby the report of a CA firm i.e. Pratap Singh Surana was brought on record stating that the amount shown in the balance sheet of 2016-2017 as unsecured sundry advances does not belong to the appellant and in fact the same is pertaining to some other creditors. Thus the contention of the appellant is that Rs. 50,00,000/- were received by him as advance for supply of fabric and as there was some dispute with regard to the supply, the fabric in fact was supplied on 01.04.2016 of the value of Rs.72,39,520/- and this debt was discharged accordingly. Reliance in this regard has been placed on various invoices of date 01.04.2016 and confirmation of account issued allegedly by the Respondent No. 1 on 04.04.2016, which has been completely denied by the financial creditor.

39. The Respondent has filed a supplementary affidavit of date 06.01.2022 stating therein that the CD had given the confirmation of the account for financial year 2009-2010 to 2016-2017 and that the calculation of the loan amount of the CD including the interest amount is matching with the amount reflected in the financial statement of the CD of the year 2016-2017 i.e. Rs. 72,39,520/-, under the head of long term borrowing.

40. The Tribunal vide its order dated 29.04.2022, rejected the application moved under Section 7 of the Code on the ground that no document governing underlying arrangement between the parties has been filed and only TDS certificates which is not sufficient to conclude that transaction is financial debt, has been filed and also that the transaction is of the year 2009 and acknowledgment is stated to be of the year 2016-2017 which is beyond the limitation period and also not a direct acknowledgment.

41. As stated earlier Respondent No. 2/Drolia Agencies Pvt. Ltd. (assignee of the financial debt) preferred an appeal being CA (AT) (Ins) No. 1054 of 2022 which was decided by a coordinate Bench of this Tribunal on 07.12.2023.

42. It is also pertinent to mention here that during the course of hearing of appeal an additional affidavit was filed by the appellant Bijendra Prasad Mishra stating that the application is barred by limitation as the loan has not been recorded in balance sheet of date 31.03.2017.

43. It is also worth to mention here a certificate of M/s Pratap Singh Surana a CA firm was filed by the CD stating that unsecured sundry advances shown in the balance sheet dated 31.03.2017 does not belong to Subh Chintak while appellant contended that liability of the Respondent has been shown in the balance sheet of the Respondent from year 2019 till 31.03.2017.

44. It is in the background of these conflicting facts this Appellate Tribunal in CA (AT) (Ins) No. 1054 of 2022 had opined as under:

“7. We have heard Counsel for the Parties and after examining the aforesaid record, we are of the considered opinion that it would be just and expedient if the entire record is again considered by the Tribunal, to record a firm

finding of the fact, about the issue of limitation. In case it is held by the Tribunal that the money belonging to the Appellant is not part of Sundry Advances reflected in non-current liabilities of long-term borrowing in the balance sheet of 31.03.2017 and the petition has been filed in the year 2020 then it would be barred by limitation but it is found that the Sundry Advances belongs to the Appellant then the matter shall be altogether different.

*8. Thus, with these observations, the Impugned Order is hereby set aside. The matter is remanded back to the Learned Tribunal to decide the issue of limitation again after affording opportunity to both the parties to lead evidences in that regard, if any. The Parties are directed to appear before the Learned Tribunal on **20th December, 2023.***

9. It is made clear that the we have not made any observation on the merit of the case, much less about the issue of limitation which has been kept open to be decided by the Tribunal.

45. Thus in compliance of the aforesaid direction of this Appellate Tribunal a duty was cast on the adjudicating authority to consider the entire record for the purpose of recording a firm finding about the issue of limitation holding categorically that if it is held by the tribunal that the money belonging to the appellant (Drolia) is not part of sundry advances reflected in the non-current liabilities of long term borrowings in the balance sheet of 31.03.2017 the petition would be barred by limitation, having been filed on 01.10.2019, but if it is found that sundry advances belongs to the appellant than the matter shall be altogether different.

46. Thus the core issue for consideration was made the balance sheet of the date 31.03.2017. It is thereafter the tribunal has passed impugned order dated 13.12.2024 which is under challenge before us.

47. A perusal of the impugned order would show that the points which have weighed in favour of the financial creditor by the tribunal, for accepting their application maybe summarised as under:

(i) that supplementary affidavit filed by the financial creditor clearly reveals confirmation of accounts by Drolia itself is resolved to sum of Rs. 72,39,520/- in balance sheet of 31.03.2017 while the figures given in the certificate of the CA firm did not match with the balance confirmation certificate.

(ii) On 04.04.2016 a notice has been given by Subh Chintak to CD for Rs. 72, 39,520/- showing dues till 31.03.2015 and in the balance sheet of the CD dated 31.03.2016 the balance due under the head of long term borrowing is also shown as Rs. 72,39,520/- which perfectly matches with the amount shown in the notice as well as in the confirmation of accounts by the CD, leaving no room for disbelieving financial debt.

(iii) Petition has been filed within limitation and debt and default has been admitted and

(iv) Acknowledgment of debt is emerging in the balance sheet of CD dated 31.03.2017.

The aforesaid findings have been challenged by Ld. Counsel for the appellant by submitting various submissions which we have already recorded. The record would reflect that according to own admission of appellant provision of 9% interest was made and TDS was also deducted till the year 2015-2016 on the amount of Rs. 50 lakhs which was admittedly received by the appellant. We fail to understand that if Rs. 50,00,000/- were received by appellant as advance for supply of material, why interest @ 9%

was provided by the CD, which prima facie fortifies the claim of the FC that this amount was given as financial debt for time value of money. Secondly, the dispute pertaining to the quality of the fabric is alleged as a reason for pendency of this amount with CD for almost 7 years. We again fail to satisfy ourselves that when the supply of fabric was yet to be made, how there can be a dispute with regard to its quality. Admittedly TDS has been reduced by the CD himself till the year 2015-2016 on the interest which has accrued on Rs. 50 lakhs. There is no communication also from either side with regard to the quality of the alleged proposed supply of any fabric and the amount calculated by the financial creditor is tallying with the amount reflected in the financial statement of the year 2016-2017 of the CD and earlier also this amount has been shown in the accounts book of the CD thus keeping in view all the documentary evidence produced by appellant as well as by financial creditor we find no illegality in the conclusions drawn by the adjudicating authority that Rs. 50,00,000/- were disbursed by the financial creditor for time value of money and was a financial debt.

48. So far as the other contention of Ld. Counsel for the appellant is concerned with regard to the fact that the advance amount of Rs. 50,00,000/- allegedly received as an advance of supply of goods and the fabric has been supplied on 01.04.2016, is concerned the financial creditor has denied the invoices relied on by the CD, altogether and claimed that all these invoices are fake and have been prepared showing such a huge supply on a single day i.e. 01.04.2016 and it is also emphasised that instead of supplying the textile goods of the amount of advance money allegedly given of Rs. 50,00,000/-, surprisingly the fabric of the value of Rs. 72,39,250/- is

shown to have been supplied, which itself puts a big question mark on the defence taken by the CD.

49. It is also highlighted that even after alleged supply of the fabric the loan was still reflecting in the balance sheet of the CD of the date 31.03.2017 pertaining to which a certificate of CA firm, is claimed to have been procured by the CD and it is the case of the Financial Creditor that in fact no such supply has been made. It is also highlighted that the closing inventory of the appellant as on 31.03.2016 is shown in the books of account as Rs. 30,94,726.06/- whereas goods to the tune of Rs. 72,39,250/- is shown to have been supplied.

50. We are of the considered view that claim of the appellant to have discharged the advance of Rs. 50,00,000/- by supplying goods of Rs. 72,39,250/- on 01.04.2016 is not substantiated by the record, especially by the presence of loan amount in the balance sheet of the CD of date 31.03.2017.

51. We are of the view that in the preceding years also pertaining to which the appellant has admitted entry of this loan amount (according to CD as advance money) has been shown irregularly, which reveals that perhaps the account books of the CD were not maintained on the basis of established accounting standards. However, the matching of the figure of loan as calculated by the financial creditor in the balance sheet of CD of date 31.03.2017 which has also been relied on by the Tribunal and has also been shown in Part –IV of Form I appears to be a substantial evidence with regard to the disbursement of the loan of Rs. 50,00,000/-.

52. Lastly, it is transpired that the first notice of demand was issued by the Subh Chintak on 04.04.2016 and on account of default committed the limitation could only be available to the creditors till 03.04.2019 only, however, mentioning of loan in the balance sheet of the CD of date 31.03.2017, in our opinion would amount to a clear acknowledgment of debt in writing by the CD and as this acknowledgment of debt has occurred within the cut-off date i.e. 03.04.2019, the limitation was further extended by virtue of Section 18 of the Limitation Act for another three years i.e. is till 31.03.2020 and admittedly the application has been filed within this extended period of limitation. Thus, we hold that the Tribunal has not committed any error in finding the application filed by the financial creditor within permissible time, keeping in view Section 18 of the Indian Limitation Act.

53. One another issue which has been contended by Ld. Counsel for the appellant is with regard to the fact there is no written agreement of advancement of financial debt and in absence of the same the debt advanced by the financial creditor may not be termed as a financial debt. Hon'ble Apex Court in **Innoventive Industries Limited v. ICICI Bank (2018) 1 SCC 407** has settled that to initiate CIRP under Section 7 of the IBC, the Adjudicating Authority is only required to determine as to whether a default has occurred and whether the legally payable debt was due and has remained unpaid. If the Adjudicating Authority is satisfied that the default has occurred of a legally payable debt and the amount of default is more than the threshold and also that application has been filed within limitation, the application is to be admitted unless it is incomplete.

54. At this stage relevant provisions of the IBC are also necessary to be perused for the purpose and are reproduced as under: -

Sections

"3(6) **"claim"** means— (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

3(11) **"debt"** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

3(12) **"default"** means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;

5(7) **"financial creditor"** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

5(8) **"financial debt"** means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing; [Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution; (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;"

In this regard, Regulation 8(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 may be looked into, which is also reproduced as under: Rule 8(2) provides:

"8(2) The existence of debt due to the financial creditor may be proved on the basis of—
(a) the records available with an information utility, if any;
or
(b) other relevant documents, including—
(i) a financial contract supported by financial statements as evidence of the debt;
(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;
(iii) financial statements showing that the debt has not been [paid]; or
(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any."

Perusal of the above would reveal that this Regulation do not contemplate existence of all documents for the purpose of proving existence of financial debt and use of word "or" in above Regulation clearly indicates that such debt may be proved by any of the document referred to in Sub-regulation 2(b) also. Thus Claim of a financial Creditor may be proved by various documents mentioned therein and it cannot be assumed that in absence of a written contract the existence of legally payable financial debt could not be

established, per contra the existence of such debt may very well be proved by other documents referred therein.

55. A coordinate Bench of this Appellate Tribunal in **‘Agarwal Polysacks Limited vs K.K. Agro Foods and Storage Limited, 2023 SCC Online NCLAT 624**, while considering its earlier decisions i.e. “Company Appeal (AT) (Ins.) No. 713 of 2019, Prayag Polytech Pvt. Ltd. vs. Gem Batteries Pvt. Ltd.”, “Company Appeal (AT) (Ins.) No. 468 of 2019, Jagdambey International vs. Visa Powertech Pvt. Ltd.”, “Company Appeal (AT) (CH) (Ins.) No. 108 of 2023, ‘IFCI Ltd. vs. Sutanu Sinha” and “Company Appeal (AT) (Ins.) No. 251 of 2020, ‘Pawan Kumar vs. Utsav Securities Pvt. Ltd.” (relied on by appellant) held as under;-

"11. We need to test the submission of learned counsel for the Respondent that the written financial contract is necessary for proving debt. A financial contract supported by financial statements as evidence of the debt is one of the documents contemplated in Regulation 8(2) but that is not exclusive requirement for proving existence of debt. Financial contract thus can very well be furnished to prove the financial debt but a plain reading of Regulation 8(2) indicate that it is not mandatory that existence of financial debt has to be proved by a financial contract. For example: records available with an information utility can very well be used as proof for existence of financial debt. Further, financial statements showing that the debt has not been paid is also one of the clauses in Regulation 8(2) by which existence of debt can be proved.

21. When we look into the statutory scheme as reflected in the Application to Adjudicating Authority Rules, 2016 and CIRP Regulations, 2016, it is clear that financial debt can be proved from other relevant documents and it is not mandatory that written financial contract can be only basis for proving the financial debt. We, thus, answer Issue No. 1 holding that it is not necessary that written financial contract be the only material to prove the financial debt.

22. The second question is as to whether Appellant by filing relevant materials was unable to prove that there

was any financial debt which was extended to the Corporate Debtor.

31. The Adjudicating Authority, however, took a view that there should be financial contract between the parties which elucidate the rate of interest and date of repayment. The Adjudicating Authority took a view that there is no written agreement to establish the nature of transaction between the parties, hence, Appellant failed to prove the debt. We have already held that requirement of written financial contract is not a pre-condition for proving debt”.

In *Satish Balan v. Mrs. Neeta Navin Nagda, Company Appeal (AT) (Ins.)*

No. 718 of 2023” decided on 04.07.2023, this tribunal in Para 14 and 15

of the Judgment opined as under: -

“14. This ‘Appellate Tribunal’ observe that the Code nowhere prescribes that there should be a written agreement between the parties to prove the loan and its disbursement to be treated as financial debts. It is also observed that if there are acknowledgments by the ‘Corporate Debtor’ and where the statements of accounts of the ‘Corporate Debtor’ are in position to proof disbursement of loan and payment of interest, the absence of formal written agreement would not bar the ‘Financial Creditor’ (the Respondent No. 1 herein) from initiating the CIRP.

15. We take note from the record made available that there have been clear acknowledgments which have been issued by the ‘Corporate Debtor’ for the money received from the Respondent No. 1 which also mentioned the quantum of interest payment to be made by the ‘Corporate Debtor’ to the Respondent No. 1. Similarly, we also take into account the fact that TDS was deducted regarding interest paid and the name of the Appellant as ‘dedutor’ and the name of the Respondent No. 1 as ‘deductee’ is clearly evident. This does not give any scope for benefits of the ‘Appellant’.”

In *Desana Impex Limited vs. Brick and Mortar Realty Private Limited,*

Company Appeal (AT) (Insolvency) No. 318 of 2024 decided on

December 18, 2024, this tribunal held as follows: -

"29.....Adjudicating Authority has placed great reliance on RBI Master circular on Fair Practices Code, which makes written agreement mandatory. It is to be noted that this was issued on 01.07.2015. However, Corporate

Debtor had approached the Financial Creditor in the year, 2013 and there was an oral agreement and furthermore three disbursements of the loan amount were made on 24.05.2013 and 28.06.2014 i.e. prior to RBI Circular, therefore making it inapplicable in the present case. Further, Insolvency and Bankruptcy Code ('IBC') does not prescribe/mandate that there should be a written agreement to establish financial debt. RBI Circular is dated July, 2015 whereas the IBC was enacted in the year 2016 and therefore, IBC holds supremacy over the RBI Circular. In fact, Section 238 of the IBC has an overriding effect on anything contained in any other law in force or any instrument having effect by virtue of such law. Notwithstanding non-maintenance of written records, it cannot be concluded that the debt and default cannot be established under the IBC. In any case, as per Section 238 of the Code, provisions of the IBC override other laws.

33. It is to be noted that the loan is also recorded in the balance sheet of the Appellant even though as "other liabilities" instead of "loan" and this does not negate the existence of a financial debt and therefore the conclusion of the Adjudicating Authority that this is not a financial debt cannot be sustained. Even if we don't rely on this material on record, there is sufficient other material on record to establish debt and default."

In *Jaiprakash Agarwal Managing Director, Bazargaon Paper & Pulp Mills Pvt. Ltd. Vs Alka Prakash Agarwal and Another, Company Appeal (AT) (Insolvency) No. 292 of 2023, decided on 02.07.2024* this Appellate Tribunal held that written financial contract is not a pre-condition or an exclusive requirement for proving existence of debt. It has been further amplified that the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and CIRP Regulations makes it is clear that financial debt can be proved from other relevant documents and it is not mandatory that written financial contract can be the only basis for proving the financial debt.

This Tribunal in the matter of **Rahul H. Mehta vs Gajendra Investment Ltd.**, in Company Appeal (AT) (Insolvency) No. 739 of 2022, decided on 15.10.2024, while facing identical factual situation opined as under: -

*"11. This issue of financial contract being a sine qua non for establishing a financial debt has been well settled in a judgement of this Tribunal in **Agarwal Polysacks Ltd. vs K. K. Agro Foods & Storage in CA(AT)(Ins)No.1126 of 2022** wherein after going into Regulation 8(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 3(1)(d) and Rule 4(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which regulates filing of application by the Financial Creditors, it has been held that written financial contract is not a pre-condition or an exclusive requirement for proving existence of debt. It has been further amplified therein that the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and CIRP Regulations makes it clear that financial debt can be proven from other relevant documents and it is not mandatory that written financial contract can be the only basis for proving the financial debt.*

12. It is the contention of the Respondent No.1 that the Corporate Debtor had clearly acknowledged the receipt of assistance from the Financial Creditor in their balance sheet for the year ending 31.03.2017 which was filed with the RoC. The assistance received was reflected under the heading "Short term Borrowings Inter Corporate loans" and the balance sheet further reflected that "all the above loans are repayable on demand" though the name of Financial Creditor is not specifically stated in the balance sheet."

Thus what is transpired from the perusal of the cases cited herein above is that a written agreement is not a condition precedent to prove the existence of a financial debt and the same very well be proved by other documentary evidence. Acknowledgment by the Corporate Debtor in balance sheet of date 31.03.2017 coupled with the TDS deduction certificate (26 AS) and other supporting documents e.g. demand notice given by financial creditor, matching of figures of loan amount along with interest as given in the notice and in the balance sheet of CD of dated 31.03.2017, in our considered opinion are sufficient to prove the existence of legally payable

debt, default and filing of application within the extended period of limitation having regard to section 18 of the Limitation Act. The disbursement of money is otherwise also admitted to the appellant but he is claiming it as an advance to supply goods, and this fact has not been substantiated by the material made available on record and is not sufficient to negate the existence of a financial debt and default. Therefore, the conclusion of the Adjudicating Authority that there is financial debt, default and the application has been filed within extended period of limitation cannot be said to be not based on the material which was available on record. There is sufficient material on record to establish debt, default, acknowledgement of debt in the Balance Sheet dated 31.03.2017 and filing of application within extended limitation, restraining us not to interfere in the impugned judgement.

56. Thus, keeping in view all the facts and circumstances of the case, and for the reasons recorded herein before we are of the firm view that the Tribunal has not committed any illegality in accepting the application of the financial creditor under Section 7 of the Code. Resultantly the appeal lacks force and is **dismissed** accordingly.

57. There is no order as to costs. Pending IA's if any are also closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
15.09.2025.

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