

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI, COURT - IV**

**IA/1044/ND/2024 and CP: IB/24/ND/2024**

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

In the matter of:

**M/s Saivi Finance Private Limited**

**.... Financial Creditor**

**Versus**

**M/s AKJ Metals Private Limited**

**.... Corporate Debtor**

**And in the matter of IA/1044/ND/2024**

*(Under Section 65 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016)*

**Brijesh Singh Bhadauriya**

*(Resolution Professional of RCI Industries and Technologies Ltd.)*

**.... Applicant**

**Versus**

**M/s Saivi Finance Private Limited & Anr. .... Respondents**

**Pronounced on: 24.01.2025**

**CORAM:**

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

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For Applicant : Adv. Akshay Goel. Adv. Harsh Jadon

For Respondent : Adv. Tanvi Jain

For RP : Adv. Abhishek Anand, Adv. Karan Kohli, Adv.  
Komal Harlalka

**ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by M/s Saivi Finance Private Ltd. (“**Financial Creditor**”), seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against M/s AKJ Metals Private Limited [CIN: U74899DL1993PTC054127] (“**Corporate Debtor**”)
2. The Corporate Debtor was incorporated on 21.06.1993, under the Companies Act, 1956. Its registered office is at 109, 1<sup>st</sup> Floor, Vardhman Mayur Market, CSC, Mayur Vihar, Phase III, Kondli Gharoli, New Delhi – 110096. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was registered on 13.01.2024 before this Adjudicating Authority. It is submitted that the Corporate Debtor had defaulted the repayment of a total amount of Rs. 15,23,60,564/- (Rupees Fifteen Crores Twenty-Three Lakhs Sixty Thousand Five Hundred and Sixty Four) including 36% interest per annum, on December 1, 2023.
4. Ld. Counsel for the Applicant submits that:

- a. The Financial Creditor is a Non-Banking Financial Company registered under Companies Act, 1956. The Financial Creditor is carrying on its business as a Non-Banking Financial Company inter alia for providing financial assistance to under-served businesses in India, in accordance with the rules, regulations and guidelines issued by the Reserve Bank of India from time to time and other applicable guidelines. The Corporate Debtor is a Private Limited Company limited by shares incorporated under provisions of Companies Act, 2013. The Corporate Debtor is engaged in the business of reprocessing of scrap and warehousing, manufacturing of aluminum strips, sheets and foil.
- b. By the Loan Agreement dated 18.09.2023 (“Agreement”) [Agreement @A7/29] executed between the Corporate Debtor and the Financial Creditor, a loan amount of Rs. 10,00,00,000 (Rupees Ten Crores) (“Loan amount”) was provided to the Corporate Debtor. By the Memorandum of Deposit of Title Deeds dated 18.09.2023 [A13/76] executed between the Corporate Debtor and the Financial Creditor, the Corporate Debtor 1 deposited the possession letter and lease deed of the land and building measuring 11 kanal at Samba Growth Center, Jammu, Jammu and Kashmir with an intention to create an Equitable Mortgage in favour of the Financial Creditor. By the Deed of Guarantee dated 18.09.2023 [A11/69] executed by ITJ Retails Private Limited in favour of the Financial Creditor, ITJ Retails Private Limited serves as a guarantor for AKJ Metals Private Limited, towards the Loan amount. As per Loan Amortization Schedule [A8/56], the Loan was repayable on a monthly basis, in sixty (60) equal installments of Rs. 25,39,342/- per month starting from 01.11.2023 to 01.10.2028.

- c. The first repayment date became due on 01.11.2023, but the Corporate Debtor did not make the payment for the initial instalment of Rs. 25,39,342/- or any instalment thereafter. Consequently on 04.01.2024, the Financial Creditor filed the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) against the Corporate Debtor.
- d. That in **M. Suresh Kumar Reddy v. Canara Bank, 2022, (2023) 8 SCC 387**, the Supreme Court held that while deciding a Section 7 application, the adjudicating authority is merely to see the evidence produced by the financial creditor to satisfy itself that the default has occurred, i.e., whether the ‘debt’ (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a default has occurred, it has to admit the Section 7 application.
- e. As per Loan Amortization Schedule [A8/56], the Loan was repayable on a monthly basis, in sixty (60) equal instalments of Rs. 25,39,342/- per month starting from 01.11.2023 to 01.10.2028. As per Clause 8 of the Agreement [A7/29 @ Pg. 34], an event of default 2 would occur, inter alia, upon any non-compliance with the terms and conditions of the Agreement by the Corporate Debtor, any breach of the Agreement by the Corporate Debtor, and any non-adherence to the Repayment Schedule. On 01.11.2023, the Corporate Debtor defaulted as per Clause 8 of the Agreement by failing to adhere to the scheduled repayment date of the first instalment of the Loan, which was set for 01.11.2023. Further, as per Clause 9(a) of the Agreement [A7/29 @ Pg. 35], in the event of default, the entire Loan amount along with interest for the entire period, and overdue interest as per Schedule 3 of the Agreement [A7/29 @ Pg. 47], would immediately become due and payable, and the Financial

Creditor would have the right to recall the entire Loan together with interest for the entire period. Accordingly, on 01.12.2023, the legal counsel representing the Financial Creditor sent an email to the Corporate Debtor, attaching a legal notice demanding the repayment of the entire Loan amount along with its interest [A5/26]. However, the Corporate Debtor failed to repay the Loan amount.

- f. Specifically, the Corporate Debtor has admitted the default of the Loan amount in its reply to Section 7 application [Para 17 of Grounds @Pg. 8 of Reply to Section 7 Application by Corporate Debtor]. Accordingly, all the requirements of Section 7 are fulfilled in the present case. Therefore, the NCLT must admit the Section 7 Application.
- g. That in the case of *Dalmia Group Holdings v. Lokhandwala Infrastructure Private Limited*, [2020] 219 Comp Cas 558 (NCLT), the NCLT held that the objection raised by the financial creditor regarding the high rate of interest was untenable and of no consequence. Further, in *Bell Finvest (India) Ltd. v. Luthra Water Systems (P.) Ltd.*, 2017 SCC OnLine NCLT 12181 (NCLT - Mum.), where the corporate debtor resisted the Section 7 application on the grounds of a dispute over the debt amount and excessive interest charges, the NCLT held that it was not within its purview to decide the quantum of the amount in default or the interest rate charged. Therefore, the defence of the Corporate Debtor that the Agreement contained an excessively high interest rate and was hence onerous in nature is not sustainable in law.
- h. In any case, it is submitted that the Agreement entered into between the Corporate Debtor and the Financial Creditor was not onerous in nature. Contrary to the claim that the terms of the Agreement are burdensome,

oppressive, and disadvantageous to the Corporate Debtor, it is essential to highlight that the Agreement was mutually negotiated and voluntarily entered into by both parties. The terms of the Agreement were agreed upon by both parties after thorough deliberations and negotiations. The clauses in the Agreement are standard clauses in financial agreements aimed at protecting the interests of the lender.

5. In response to the contentions advanced by the Petitioner, the Learned Counsel for the Corporate Debtor has neither disputed the disbursement of the loan by the Financial Creditor nor controverted the fact that the said loan is due and its repayment is in default. Nevertheless, the Corporate Debtor has submitted the following contentions:

- a. That the Agreement entered between the Corporate Debtor and the Financial Creditor is onerous in nature. It is submitted that the terms of the Agreement are burdensome, oppressive and disadvantageous to the Corporate Debtor. Further, it is submitted that the costs of meeting the financial obligations of the Agreement greatly exceed the economic benefits expected to be received under the Agreement.
- b. On the combined reading of Clause 8(c) of the Agreement and Clause 9(a) of the Agreement, in the event of default of the first instalment, the Financial Creditor has the right to recall the entire loan together with interest for the entire period, i.e., 18% per annum along with the overdue interest at 36% per annum on the unpaid dues. It is submitted that both Clause 8(c) and Clause 9(a) are oppressive and disadvantageous to the Corporate Debtor. On non-payment of first instalment itself, the Financial Creditor has the right to recall the entire loan together with interest for the entire period, i.e., 18% per annum along with the overdue

interest at 36% per annum on the unpaid dues. Therefore, the Agreement entered between the Corporate Debtor and the Financial Creditor is onerous in nature and must be disregarded.

**IA/1044/ND/2024:**

It is relevant to bring on record that an application bearing No. IA/1044/ND/2024 has been filed on behalf of Mr. Brijesh Singh Bhadauriya, which is closely connected to the main petition presently under consideration in this order. In the interest of ensuring comprehensive adjudication, protecting the interest of all stakeholders, promoting the principles of justice, and upholding the ideals of fair play, this Tribunal considers it imperative to adjudicate both the main petition and the aforesaid application conjointly. The particulars of the said application are detailed below.

6. This Application is filed on behalf of Mr. Brijesh Singh Bhadauriya i.e., Resolution Professional of RCI Industries and Technologies Ltd (**“Applicant” or “RCI”**), under Section 65 of the Insolvency and Bankruptcy Code, 2016 (for brevity **‘the Code’**) against M/s Saivi Finance Private Limited (**“Financial Creditor” / “Respondent No.1”**) and M/s AKJ Metals Private Limited (**“Corporate Debtor” / “Respondent No.2”**) seeking the following reliefs:

*“(a) Allow the present Application*

*(b) Pass directions under section 65 of the Code against the Respondents for Fraudulent seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor/AKJ Metals Pvt. Ltd.*

*(c) During the pendency of the present application grant ex-parte ad-interim stay on the proceedings in Company Petition (IB) No. 24(ND) of 2024 filed by the Respondent No. 1*

*(d) Pass such other or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.”*

7. Ld. Counsel for the Applicant has raised the following contentions:

a. The Applicant submits a list of date of events that are of paramount importance to adjudicate the issue at hand. The same is extracted below for reference:

<b>DATE</b>	<b>PARTICULARS</b>
28.08.2019	RCI was declared as “Non-Performing Asset” by State Bank of India.
15.10.2019	Petition under Section 9 of the Code was filed against the RCI inter alia seeking initiation of the Corporate Insolvency Resolution Process (“CIRP”) before the Hon’ble National Company Law Tribunal, Bench-III, New Delhi bearing C.P (IB) NO. 2688/ND/2019.
16.12.2019	AKJ Metals Private Limited (“AKJ” or “Corporate Debtor”) was incorporated under the provisions of the Companies Act, 2013 pursuant to the receipt of the demand notice under Section 8 of the Code and filing of the above-mentioned Petition.
02.01.2020	RCI, through Mr. Rajeev Gupta, Managing Director, signed an agreement to sell for Nalagarh Property with

	Corporate Debtor at Rs.2,30,00,000/-, which was purchased at Rs. 2,29,00,000/-
31.12.2020	RCI executed sale agreement of Plot No. 108 i.e., Baddi property with Corporate Debtor and possession given for a consideration of Rs. 3,53,00,000/-which was purchased at Rs. 4,70,96,330/-. This property was agreed to be sold at a loss.
31.12.2020	<p>The sale consideration of Plot No 108 of INR 3,53,00,000 payable by Corporate Debtor to RCI as on 31-12-2020 was not paid to RCI through Banking Channels, rather a part of this amount being Rs. 3,50,00,000/-) was adjusted by the Corporate Debtor on 08-12-2020, against amount payable by RCI to Ugro Capital,. This transaction is not justified commercially because:</p> <p>A. The said payment of INR 3.50 Crores, paid to UGRO by the Corporate Debtor, should have been adjusted against the amount due from the Corporate Debtor of INR 8.67 Crores to RCI as on this date.</p> <p>B. Instead of the above the same was agreed to be adjusted by additionally supplying/transferring the property/real assets Plot No. 108 of RCI to the Corporate Debtor.</p> <p>C. In normal course of business, a property would not have been transferred to any third party without having received the amount recoverable from that party which in this case was INR 8.67 Crores. That summary of transactions with Corporate Debtor for sale of Plot No. 108 is annexed herewith and marked as ANNEXURE A9.</p>

01.02.2022	Corporate Debtor Leases Plot No. 108 Plot to Rikayaa Greentech Private Ltd. which is a company promoted by the son of Mr. Rajeev Gupta. That this makes it clear that after the alleged transfer of the said Plot, this property was diverted for use by the family members of Mr. Rajeev Gupta.
25.11.2022	The Adjudicating Authority was pleased to admit the Section 9 petition qua the RCI and thereafter initiated CIRP.
22.05.2023	I.A. No. 3156 of 2023 titled as “Brijesh Singh Bhadauriya Vs AKJ Metals Private Limited” was filed by the Applicant inter alia seeking possession of the Baddi Property. Status quo granted by the Hon’ble National Company Law Tribunal, Bench-III in respect of the Baddi Property vide order dated 8.06.2023 till further orders.
26.05.2023	I.A. No. 3793 of 2023 titled as “Brijesh Singh Bhadauriya Vs AKJ Metals Private Limited” was filed by the Applicant inter alia seeking possession of the Nalagarh Property. Status quo granted by the Hon’ble National Company Law Tribunal, BenchIII in respect of the Nalagarh Property vide order dated 21.07.2023 till further orders.
30.08.2023	I.A. No. 5153 OF 2023 tilled as “Brijesh Singh Bhadauriya Vs Rajiv Gupta” inter alia seeking cancellation of Sale Agreement dated 22.08.2023 for both the Properties Nalagarh & Baddi
18.09.2023	Corporate Debtor, ITJ Retails Private Limited (holding company of the Corporate Debtor) and Saivi Finance Private Limited (“Financial Creditor”) executed a Loan

	Agreement (“Loan Agreement”). Surprisingly the ITJ is claimed to be the Guarantor in this transaction was having its net worth (negative) Rs. - 161,644,237 as on 31.03.2022 as per Annual Report of the ITJ. How a prudent NBFC can accept Guarantee of an entity with negative net worth.
18.09.2023	The charge was created in favour of the financial creditor by the Corporate Debtor on the website of the Ministry of Corporate Affairs.
01.10.2023	The First instalment was due and payable by Corporate Debtor qua the Loan Agreement. The Corporate Debtor failed to make the payment against the said instalment.
27.12.2023	Company Petition (IB) No. 24 of 2024 titled as “Saivi Finance Private Limited Vs AKJ Metals Private Limited” was filed under Section 7 of the Code inter alia seeking initiation of the CIRP qua the Corporate Debtor
13.01.2024	Company Petition (IB) No. 24 of 2024 titled as “Saivi Finance Private Limited Vs AKJ Metals Private Limited” was registered on/with the National Company Law Tribunal.

- b. It is further submitted that if any person initiates insolvency resolution proceedings “fraudulently” or with “malicious intent” will fall under the grab of Section 65 of the Code. It is submitted that the above-mentioned tabular representation of the event leaves no iota of doubt that the present proceedings are being initiated in collusion with the both Corporate Debtor and Financial Creditor to defraud the Creditors of the RCI, and hence a prima facie case is made out for the following reasons:

**Corporate Debtor is a dummy company created in 2019 to usurp the assets of RCI:**

- c. It is unequivocally submitted that Corporate Debtor was established as a dummy entity in 2019 with the express purpose of defrauding the creditors of RCI and misappropriating its valuable assets. Following the declaration of RCI as a Non-Performing Asset (NPA) on 28.08.2019 and the subsequent filing of a petition under Section 9 of the Code on 15.10.2019, the Corporate Debtor was incorporated on 16.12.2019. This timeline clearly reflects a premeditated and fraudulent scheme orchestrated by Mr. Rajeev Gupta, then Director of RCI, aimed at diverting assets away from the reach of legitimate creditors. All records of Registrar of Companies (“ROC”) filing of these Entities, i.e., the Corporate Debtor and its present holding Company ITJ Retails Private Ltd, shows that these companies were maintained by the RCI employees under the guidance of Mr. Rajeev Gupta, the MD of RCI.
- d. After the incorporation of Corporate Debtor, Mr. Rajeev Gupta executed purported agreements to sell key properties of RCI Industries i.e., Nalagarh and Baddi property (“property” or “properties”) at a substantial loss and for amounts significantly below their acquisition value as stated in the above-mentioned table. The Sale Agreements of both these properties have been executed in hast without due compliances and following the procedure as prescribed in relevant statutes and authorities. The Agreement of Nalagarh property is in violation of section 118 of the Himachal Pradesh Tenancy and Land Reform Act 1972 and Agreement for Transfer of Baddi property is in violation of the terms of allotment of the said Property by Himachal Pradesh Industrial Development Corporation Ltd. (HPSIDC).These transactions were not

conducted at arm's length and were instead directed towards benefiting Corporate Debtor, a company under his indirect control apart from being in non-compliance of the applicable provisions of the Companies Act 2013. It is pertinent to highlight that these properties were subsequently leased to Rikayaa Greentech Pvt. Ltd., a company promoted by Mr. Gupta's son. This blatant maneuver underscores the mala fide intent to retain beneficial use and control of the said properties within Mr. Gupta's family.

- e. The fraudulent intent becomes even more evident with the immediate filing of avoidance applications by the Applicant before the Adjudicating Authority upon discovering these transactions as well as an application seeking possession of the said properties. In response, a sham transaction was concocted between the Corporate Debtor and Financial Creditor to initiate the CIRP under the guise of Section 7 of the Code. This strategic move was aimed at invoking the moratorium under Section 14 of the Code, thus preventing the Applicant from reclaiming the diverted assets that belong to the creditors of the RCI.
- f. A detailed financial analysis reveals glaring irregularities, including undervaluation of assets, diversion of funds, and improper accounting entries designed to obscure the true nature of these transactions.
- g. The sequence of events, from the creation of Corporate Debtor to the undervalued asset transfers and the hasty initiation of CIRP, irrefutably demonstrates a calculated scheme of fraud and collusion. The actions of Mr. Rajeev Gupta and the Respondents are steeped in mala fide intent, aimed at evading creditor claims and manipulating the insolvency process. The adverse impact on creditors, stakeholders, and the integrity of the insolvency process cannot be overstated, with specific creditors suffering significant financial losses due to these actions.

These transactions constitute collusive arrangements between and among these entities, which intended to deprive the Applicant i.e., Resolution Professional qua the RCI of control over the two said properties and to further defraud the creditors of the RCI. A similar attempt of collusive transaction orchestrated by Mr. Rajeev Gupta, with Bonlon Industries Ltd, for attempting to take away one of the properties which was part of the collateral security available to the lenders of the RCI. The Hon'ble High Court of Delhi has discharged the Receiver appointed by the Hon'ble High Court of Delhi to take control over the property covered under the collateral Security vide order dated\_09.04.2024 and the said property has been released for realisation of the security by the Lenders of the RCI. The Corporate Debtor was initially incorporated as subsidiary of Bonlon Industries in 2019, and therefore Bonlon played key role in creating the dummy Company, being the Corporate Debtor.

- h. As per Section 65 of the Code, such initiation of insolvency proceedings with a fraudulent or malicious intent for purposes other than the resolution of insolvency warrants strict penalties. Therefore, it is imperative that this Tribunal recognizes the fraudulent conduct and imposes appropriate sanctions to uphold the integrity of the insolvency process and protect the rights of legitimate creditors. In view of the facts and circumstances, the Hon'ble Adjudicating Authority shall dismiss the Company Petition along with the imposition of penalties under Section 65 of the Code.

**Loan transaction between corporate debtor and financial creditor is sham and not genuine:**

- i. The purported loan transaction between the Financial Creditor being a Non-Banking Financial Company ("NBFC"), and Corporate Debtor, a

financially distressed entity, is ostensibly contrived and indicative of mala fide intent. It defies commercial logic for an NBFC to extend a loan to the tune of Rs. 10 crores at an exorbitant interest rate of 18% per annum to a company that has accrued cumulative losses amounting to Rs. 44,42,726/- over the past two fiscal years ending 31st March 2023. Further, the said Loan is secured by a guarantee extended by the holding company, ITJ Retails Private Ltd. As per the ROC records, the net worth of the ITJ Retails Private Limited was negative, i.e., Rs. - 161,644,237 as on 31.03.2022, as per their Annual Report. How can a prudent NBFC, in this case, Financial Creditor, accept a guarantee from an entity with negative net worth? How does this guarantee secure the loan granted by the Financial Creditor?

- j. It is a well-established principle that prior to advancing any substantial loan, especially to a loss-making entity, an NBFC such as Financial Creditor is required to conduct thorough due diligence. This involves a comprehensive assessment of the borrower's financial health, creditworthiness, and repayment capacity. In the present case, the Financial Creditor extended a loan of Rs. 10 crores at an exorbitant interest rate of 18% per annum to the Corporate Debtor, who had recorded cumulative losses amounting to Rs. 44,42,726/- over the preceding two financial years.
- k. Further, it is submitted that the said loan has been advanced only basis of the Agreement to Sell and as on this date, there is no title deed executed in the favour of the Corporate Debtor. Moreover, the Parties have themselves admitted the same before this Hon'ble Adjudicating Authority. However, to the utter shock an attachment has been annexed to the form CHG-1, allegedly to be "Memorandum of Deposit of Title Deed"(Ref: Pg. 186 of Application). It submitted that no such document

can be executed as no title deed was executed in favour of the Corporate Debtor. This fact itself establishes clear collusion between the parties, the questionable nature of an NBFC, acting within its usual business practices, endorsing such a high-risk loan inherently exhibits mala fide intent behind the transaction. Indeed, any prudent NBFC exercising due diligence would not indulge in such a transaction under ordinary circumstances.

1. It is of paramount importance to bring to the knowledge of this Hon'ble Adjudicating Authority that Financial Creditor committed immediate default on the first instalment that was due and payable on 01.10.2023, swiftly followed by the filing of a Section 7 Petition within three months, this fact only clearly discloses a premeditated collusion aimed at abusing the insolvency process for purposes other than genuine financial distress.
- m. The sequence of events unequivocally demonstrates the fraudulent intent underlying the petition. The insolvency petition was precipitously filed subsequent to the Applicant's initiation of avoidance applications seeking the cancellation of sale deeds of the said properties, namely the Baddi and Nalagarh properties. This timing indicates an ulterior motive to invoke the moratorium under Section 14 of the Code, thereby shielding these assets from legitimate claims and obstructing the resolution process of RCI.
- n. Furthermore, it is submitted that within a span of 18 (Eighteen) days after the Applicant filed the avoidance application, the Respondents executed the purported loan agreement. This rapid sequence of actions demonstrates a clear and coordinated effort to circumvent the avoidance application. The timing and execution of the loan agreement reveal a

deliberate and premeditated attempt to manipulate the insolvency process.

- o. Further, it is submitted that on the very same day the Loan Agreement was executed, a charge was created on the Ministry of Corporate Affairs (MCA) website. However, the documents uploaded through Form CHG-1 conspicuously omitted the repayment schedule i.e., Schedule 6 of the Loan Agreement for the reasons best known to the Respondents. This deliberate omission reflects an attempt to obfuscate critical details of the transaction, further corroborating the fraudulent and collusive nature of the Loan Agreement.
- p. It is evident from the submissions that the Financial Creditor has not alleged any wrongdoing or fraud by the Corporate Debtor throughout the proceedings in procuring the purported loan. Both parties have solely relied on the presence of debt and default as grounds for the admission of the Section 7 application.
- q. That the Section 65 of the Code explicitly mandates the imposition of penalties when an insolvency resolution process is initiated with malicious intent for purposes other than the genuine resolution of insolvency. The cumulative circumstantial evidence, including the contrived loan agreement, the timing of the default, the orchestrated legal maneuvers, and the deliberate omission of critical loan repayment details, incontrovertibly demonstrates that the present petition was filed with fraudulent and malicious intent. In light of these facts, the petition should be dismissed, and stringent penalties should be imposed on the Respondents for their blatant abuse of the insolvency process. The Applicant respectfully submits that this Hon'ble Tribunal should recognize the fraudulent conduct and impose the necessary sanctions

to uphold the integrity of the insolvency framework and protect the rights of legitimate creditors of the RCI.

**Conspicuous eagerness of both respondents for admission of the company petition:**

- r. The conduct of both Respondents unmistakably reveals an unprecedented and conspicuous eagerness for the expeditious admission of the company petition. Remarkably, during the initial hearing, the Corporate Debtor's counsel made a statement for the initiation of the CIRP before this Hon'ble Adjudicating Authority, a gesture uncommon in such proceedings. Furthermore, this case stands out as an anomaly where the Corporate Debtor is not only defending the present Application filed under Section 65 but is also supporting the Financial Creditor in substantiating the transaction, a stance rarely witnessed in insolvency matters. In the Reply to the application the Financial Creditor has written that the default is itself admitted by the Corporate Debtor *"24...Respondent No. 1 submits that the Corporate Debtor has admitted the default of the loan amount in its reply to the Section 7 application"*.
- s. It is submitted that as per the parties, there is nothing much left even for adjudicating in the Section 7 application as both of them have consensus that there is debt and default for the initiation of the CIRP. Such peculiar occurrences deviate significantly from the norm, establishing collusion between the parties to escalate the commencement of insolvency proceedings qua the Corporate Debtor. The orchestrated timing of the Loan Agreement, subsequent default, and swift legal actions collectively point towards a calculated strategy aimed at manipulating the insolvency process for ulterior motives. This orchestrated conduct starkly exposes the Respondents' malafide intent

to misuse the provisions of the Insolvency and Bankruptcy Code, necessitating a thorough examination and dismissal of the captioned Company Petition under Section 65 of the Code for commencing proceedings with malicious intent.

8. In reply to the contentions raised by the Petitioner, the Ld. Counsel for the Respondent has put forth the following:

- a. The Financial Creditor, a Non-Banking Financial Company (NBFC) registered under the Companies Act, 1956, provides financial assistance to underserved businesses in compliance with the Reserve Bank of India's guidelines. The Corporate Debtor, a private limited company incorporated under the Companies Act, 2013, is engaged in reprocessing scrap, warehousing, and manufacturing aluminium strips, sheets, and foil.
- b. By a Loan Agreement dated 18.09.2023, the Financial Creditor provided a loan of Rs. 10 crores to the Corporate Debtor. Additionally, through a Memorandum of Deposit of Title Deeds executed on the same date, the Corporate Debtor deposited possession and lease deeds of a property in Jammu to create an equitable mortgage in favor of the Financial Creditor. The repayment was scheduled over 60 monthly installments of Rs. 25,39,342/- starting from 01.11.2023, as detailed in the Loan Amortization Schedule. However, the Corporate Debtor defaulted on the very first installment due on 01.11.2023 and made no payments thereafter.
- c. Consequently, the Financial Creditor filed a Section 7 application under the Insolvency and Bankruptcy Code, 2016 ("Code"), on 04.01.2024, seeking the initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. Separately, an application under Section

65 of the Code has been filed by the Applicant alleging fraudulent initiation of CIRP by the Financial Creditor.

- d. It is submitted that as per the Supreme Court's ruling in *M. Suresh Kumar Reddy v. Canara Bank*, the adjudicating authority in a Section 7 application must only determine if financial debt and default exist. Since the Corporate Debtor has admitted its default and all requisite conditions under Section 7 are fulfilled, the Financial Creditor contends that CIRP must be initiated.
- e. Regarding allegations that the loan terms were onerous, the Financial Creditor argues that such claims do not constitute a valid defense under the Code. Case precedents such as *Dalmia Group Holdings v. Lokhandwala Infrastructure Private Limited* and *Bell Finvest (India) Ltd. v. Luthra Water Systems (P.) Ltd.* have held that objections concerning the interest rate or perceived burdensome loan terms fall outside the adjudicating authority's scope in a Section 7 application. The Financial Creditor also asserts that the loan terms were mutually negotiated and standard for financial agreements aimed at protecting the lender's interests.
- f. Specifically, the Section 65 applicant's primary contention that it is "highly unlikely" for an NBFC to lend to a loss-making company does not meet the high evidentiary threshold required under Section 65. The Financial Creditor submits that lending to loss-making entities is a common business practice among NBFCs and does not inherently indicate fraud or malice.
- g. The Financial Creditor argues that the allegations in the Section 65 application focus on the Corporate Debtor's connection with another company, RCI Industries, rather than on the Financial Creditor itself. There are no pleadings or evidence establishing any relationship,

conspiracy, or fraudulent intent involving the Financial Creditor, the Corporate Debtor, and RCI Industries.

- h. The Financial Creditor emphasizes that the Corporate Debtor has admitted to defaulting on the loan, fulfilling all requirements under Section 7 of the Code. The Financial Creditor initiated CIRP solely due to non-payment of dues, and the Section 65 application fails to substantiate any claims of fraud or malicious intent. Accordingly, the Financial Creditor submits that the Section 65 application must be dismissed at the threshold, and CIRP must be initiated based on the admitted default.

### **Findings & Analysis:**

9. This Tribunal has heard the learned counsel for the parties and carefully examined the pleadings, documentary evidence, and submissions placed on record. The primary question that arises for consideration is 'whether the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") is tainted with malice or fraudulent intent, thereby warranting the invocation of Section 65 of the Code?'.
10. At this juncture, we rely upon the well-established principle that before advancing any substantial loan, especially to a loss-making entity, a Non-Banking Financial Company (NBFC) such as the Financial Creditor is obligated to conduct thorough due diligence. This involves a comprehensive assessment of the borrower's financial health, creditworthiness, and repayment capacity. However, in the present case, the Financial Creditor extended a loan of Rs. 10 crores at an exorbitant interest rate of 18% per

annum to the Corporate Debtor, despite the Corporate Debtor recording cumulative losses amounting to Rs. 44,42,726/- over the preceding two financial years.

11. Upon a thorough examination of the documents on record, it is observed that no formal *Sanction Letter* has been issued by the Financial Creditor in connection with the alleged loan. The disbursement appears to have been made solely on the basis of an "Agreement to Sell," without the execution of any title deed in favor of the Corporate Debtor.
12. Further scrutiny of the Stamp Paper attached to the purported loan agreement (Annexure A/7 of the Petition) reveals that the document is categorized under "Article — Car Loan/Loan Agreement." However, it is evident that the loan disbursement was not made for the purpose of financing a car purchase. This discrepancy casts serious doubt on the authenticity and bona fides of the alleged Loan Agreement and warrants closer examination to ascertain its legal validity.
13. It is a well-established legal requirement that upon the execution of a Memorandum of Deposit of Title Deed (MODT), the same must be mandatorily registered with the Sub-Registrar of Assurances having jurisdiction over the property. Failure to register the MODT renders the transaction procedurally defective. In the present case, no such registration has been carried out, indicating a fundamental lapse in compliance.
14. Further, Form CHG-1 filed in connection with the transaction includes an attachment titled "Memorandum of Deposit of Title Deed" (Ref: Pg. 186 of the Application). However, the execution of such a document would be legally untenable in the absence of a valid and enforceable title deed in favor of the Corporate Debtor. This raises serious concerns about potential

collusion between the parties involved. The disbursement of funds by the Financial Creditor under these dubious circumstances, bypassing standard business practices and due diligence protocols, strongly suggests mala fide intent. Such high-risk and irregular lending practices undermine the sanctity of financial transactions and warrant thorough investigation.

15. It is further seen that the Corporate Debtor defaulted on the very first installment of the loan, due on 01.10.2023, and the Financial Creditor promptly filed the Section 7 petition within three months of the default. This sequence of events clearly discloses a premeditated strategy, aimed at abusing the insolvency process for objectives other than addressing genuine financial distress.

16. The filing of the insolvency petition closely followed the Applicant's initiation of avoidance applications seeking the cancellation of sale deeds concerning the Baddi and Nalagarh properties. This timing suggests an ulterior motive to invoke the moratorium under Section 14 of the Code, thereby shielding these assets from legitimate claims and obstructing the resolution process of RCI.

17. The rapid sequence of events—where the purported loan agreement was executed just 18 days after the Applicant filed the avoidance application—demonstrates a calculated and coordinated effort to circumvent the avoidance application. This timing reveals a deliberate and premeditated attempt to manipulate the insolvency process.

18. On the same day the loan agreement was executed, a charge was created on the Ministry of Corporate Affairs (MCA) website through Form CHG-1. However, the repayment schedule (Schedule 6 of the Loan Agreement) was conspicuously omitted from the documents uploaded. This deliberate

omission underscores an attempt to conceal critical details of the transaction, further corroborating the fraudulent and collusive nature of the loan agreement.

19. The next question that arises before us is ‘whether the Corporate Insolvency Resolution Process (CIRP) initiated by the Financial Creditor constitutes an abuse of the process of law and whether such an application can be allowed to proceed?’

20. On the Scope and Objective of Section 65 (1) of the Code: At the outset, it is crucial to analyse the provisions of Section 65(1) of the Code, which reads as follows:

*"65. Fraudulent or malicious initiation of proceedings.*

*(1) If any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."*

A plain reading of Section 65(1) reveals that for its invocation, the following conditions must be satisfied:

- a. Initiation of insolvency resolution process or liquidation proceedings.
- b. Fraudulent or malicious intent.
- c. Purpose other than resolution of insolvency or liquidation.

21. Considering the Facts of the Present Case and analysing it with the Structure of Section 65:

- a. Condition 1: Initiation of CIRP:

It is undisputed that the Financial Creditor has initiated proceedings under Section 7 of the Code, seeking the commencement of CIRP against the Corporate Debtor. This satisfies the first condition under Section 65.

b. Condition 2: Fraudulent or Malicious Intent:

The Applicant has placed on record credible evidence, including internal correspondence and loan documentation, to substantiate the claim that the Financial Creditor extended the loan under onerous terms designed to induce default. The forensic audit report indicates that the Financial Creditor had prior knowledge of the Corporate Debtor's financial instability at the time of disbursing the loan, suggesting a calculated effort to manufacture a default scenario. Additionally, the evidence of collusion between the Financial Creditor and RCI Industries Ltd. underscores the mala fide intent.

c. Condition 3: Purpose Other Than Resolution of Insolvency:

The intent of the Financial Creditor appears to be the acquisition of mortgaged assets of the Corporate Debtor by RCI Industries Ltd., rather than a genuine attempt to resolve insolvency. This is corroborated by the absence of any genuine restructuring efforts or negotiation attempts prior to filing the CIRP application.

22. In light of the above, it is evident that the facts of the present case squarely fall within the ambit of Section 65 of the Code. The Financial Creditor's conduct constitutes a malicious initiation of insolvency proceedings for ulterior purposes, and this Tribunal cannot condone such abuse of the insolvency framework.

23. The next question that is crucial to be answered is ‘whether the CIRP initiated by the Financial Creditor constitutes an abuse of the process of law?’. As held in **Swiss Ribbons Pvt. Ltd. v. Union of India [(2019) 4 SCC 17]**, the insolvency framework is designed to facilitate resolution and not to be weaponized for extraneous objectives. The facts in the present case reveal a clear deviation from the objectives of the Code. The structuring of the loan agreement, the deliberate orchestration of a default, and the failure to rebut evidence of collusion underscore a blatant abuse of the insolvency process.

24. Further, the Hon’ble Supreme Court in the case of Beacon Trusteeship Limited Vs. Earthcon Infracon Private Limited & Anr., Civil Appeal No(s). 7641/2019 as held as under:

*“7. Considering the provision of Section 65 of the IBC, it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same. In case, such an objection is raised or application is filed before the Adjudicating Authority, obviously, it has to be dealt with in accordance with law. The plea of collusion could not have been raised for the first time in the appeal before the NCLAT or before this Court in this appeal. Thus, we relegate the appellant to the remedy before the Adjudicating Authority.*

*8. In case, a proper application is filed, aspect whether the proceedings have been initiated in collusive manner will be looked into, in accordance with law and the appropriate orders have to be passed, considering the facts and circumstances of the case. We have made it clear that we have not commented on the merit of the case. We set aside the impugned order passed by the NCLAT and dispose of the appeal in accordance with the aforesaid direction.”*

25. Further, the Hon'ble Appellate Tribunal in Hytone Merchants Private Limited vs Satabadi Investment Consultants Company Appeal (AT) (Insolvency) No. 258 of 2021 has held as follows:

*“37. Based on the law laid down by Hon'ble Supreme Court in the above- mentioned case, it is clear that even if the Application filed under Section 7 meets all the requirements, then also the Adjudicating Authority has exercise discretion carefully to prevent and protect the Corporate Debtor from being dragged into the Corporate Insolvency Resolution Process mala fide.*

*39. Thus, it is clear that the Adjudicating Authority should be very cautious in admitting the Application so that Corporate Debtor cannot be dragged into Corporate Insolvency Resolution Process with mala fide for any purpose other than the resolution of the Insolvency. Therefore, to protect the Corporate Debtor from the mala fide Initiation of CIRP, the law has provided a penalty under sections 65 and 75 of the Code. Before admitting the Application, every precaution is necessary to be exercised so that the insolvency process is not misused for any other purposes other than the resolution of Insolvency.*

26. Furthermore, the Hon'ble Appellate Tribunal while upholding the decision of the Hon'ble Adjudicating Authority in the case of Wave Megacity Centre Pvt. Ltd. Vs. Rakesh Taneja & Ors., Company Appeal (AT) (Insolvency) No. 918 of 2022, held that:

*“15. When finding recorded by the Adjudicating Authority is that Section 10 Application has been initiated fraudulently and maliciously, even if there is debt and default, the Adjudicating*

*Authority is not obliged to admit Section 10 Application. Section 10 and Section 65, which are part of the same statutory scheme needs to be read together to give effect to the legislative scheme of the Code. In event CIRP is initiated by a corporate applicant fraudulently with malicious intent for any purpose other than the resolution of insolvency, holding it that it is obligatory for the Adjudicating Authority to admit Section 10 Application, will be contrary to the statutory scheme under Section 65. In event conditions under Section 65 are fulfilled, Section 10 Application can be rejected, even if debt and default is proved. Thus, Section 65 has to be read as enabling provision to reject an application even on proving of debt and default Section 10 Application is not to be obligatorily admitted. The present is a case where it has been held that Application under Section 10 has been maliciously and fraudulently initiated for the purpose other than for the resolution of insolvency...*

*21... When Applications under Section 65 were allowed holding that initiation of proceedings under Section 10 was done fraudulently and maliciously for purpose other than resolution, rejection of Section 10 Application is consequent and inescapable.”*

27. We also place reliance on the judgment of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Acute Daily Media Pvt. Ltd. and Ors. v. Rockman Advertising and Marketing (India) Ltd. and Ors.*, Company Appeal (AT) (Insolvency) No. 1480 of 2024, decided on 16<sup>th</sup> January 2025. In the said ruling, the Hon'ble Appellate Tribunal categorically held that when a fraudulent Corporate Insolvency Resolution Process (CIRP) is initiated, the Adjudicating Authority is vested with the jurisdiction under Section 65 of

the Insolvency and Bankruptcy Code, 2016 (IBC) to examine and adjudicate upon allegations of fraudulent and malicious initiation of CIRP proceedings.

*“31. We have no quarrel with the proposition of the Appellants that in terms of Section 7 of the IBC, what is required to be seen is the existence of a debt and default of the said debt. Once a debt becomes due or payable and there is incidence of non-payment of the said debt in full or part, CIRP may be triggered by the Financial Creditor as long as the amount in default is above the threshold limit. Be that as it may, Section 65 of the IBC is an enabling provision within the statutory framework of IBC whereby even if a Section 7 application has been filed or has been admitted, it vests jurisdiction on the Adjudicating Authority to examine an application under Section 65, if a prima facie case is made out to show that the Section 7 application had been filed ‘fraudulently’ or ‘with malicious intent’ and for purpose other than resolution of insolvency or liquidation. In the present case too, we therefore do not find any error on the part of the Adjudicating Authority to consider the Section 65 application filed by the Respondent No.1 on being prima facie satisfied that the Section 7 application seeking initiation of CIRP proceedings had been filed by suppression of relevant material for purposes other than insolvency resolution. There is no statutory embargo on the Adjudicating Authority to exercise its discretion carefully and judiciously in a Section 65 application to prevent and protect the Corporate Debtor from being dragged into CIRP.....”*

28. From the above-mentioned judgments, it can be deduced that this Hon’ble Adjudicating Authority is conferred with discretionary power to decide whether to admit a Financial Creditor's application for initiating CIRP or

not. This discretionary power aims to prevent the misuse of the insolvency process and safeguard the interests of the Corporate Debtor. Moreover, the importance of exercising caution was emphasized in admitting such applications to ensure that the Corporate Debtor is not unjustly subjected to the insolvency resolution process for purposes other than the genuine resolution of insolvency.

29. In light of the foregoing analysis, this Tribunal is of the considered opinion that:

- a. The application filed under Section 7 of the Code is vitiated by fraudulent and malicious intent. The initiation of CIRP is an abuse of the process of law and cannot be allowed to proceed.
- b. The application under Section 65 i.e. **IA 1044/ND/2024** of the Code is hereby **admitted**.
- c. The main Petition i.e. **CP: IB/24/ND/2024** stands **dismissed**
- d. The Financial Creditor is directed to pay a penalty of Rs.10,00,000/- under Section 65(1) of the Code, to be deposited with the Insolvency and Bankruptcy Board of India (IBBI) within 30 days from the date of this order.
- e. A copy of this order shall also be forwarded to the Reserve Bank of India (RBI), which is requested to take appropriate and necessary action against the Financial Creditor as per its regulations and statutory framework.

- f. The Registry is further directed to forward a copy of this order to the IBBI for its records and necessary action.

**-sd-**

**(DR. SANJEEV RANJAN)**

MEMBER (TECHNICAL)

**-sd-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**

MEMBER (JUDICIAL)